

United States
Circuit Court of Appeals

For the Ninth Circuit.

6

JERRY SIMPSON,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court of the District of Alaska, Division No. 1.

FILED

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CLERK



United States
Circuit Court of Appeals
For the Ninth Circuit.

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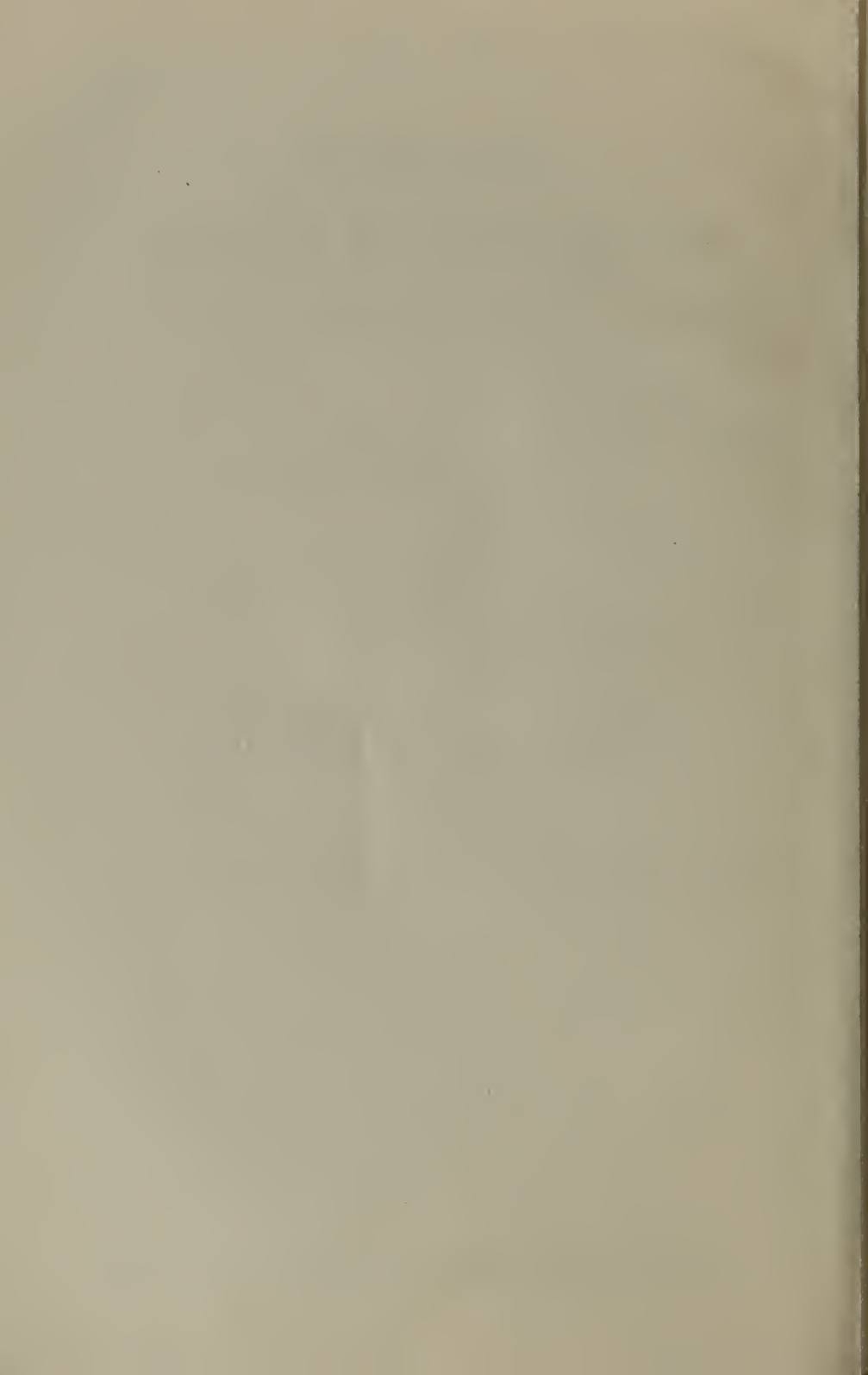
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the United States Commissioner's Court at
Ketchikan, Alaska.

UNITED STATES OF AMERICA

vs.

JIM SIMPSON and JERRY SIMPSON.

**Complaint for the Violation of Section Alaska Bone
Dry Act, Public 308.**

Jim Simpson and Jerry Simpson is accused by
Fred Handy in this complaint of the crime of hav-
ing intoxicating liquor in their possession, com-
mitted as follows: The said Jim Simpson and
Jerry Simpson, at Ketchikan, Alaska, in the Dis-
trict of Alaska, and within the jurisdiction of this
Court, did on the 7th day of January, 1922, wil-
fully and unlawfully have concealed and in their pos-
session and under their control intoxicating liquor,
the same being in violation of the Alaska Bone
Dry Act, Public No. 308, contrary to the form of
the statutes in such cases made and provided, and
against the peace and dignity of the United States.

(Signed) FRED E. HANDY.

United States of America,
District of Alaska,—ss.

I, Fred Handy, being first duly sworn, depose and
say that the foregoing complaint is true.

FRED E. HANDY.

Subscribed and sworn to before me this ninth day of January, 1922.

(Seal) A. W. FOX,
United States Commissioner, and *Ex-officio* Justice
of the Peace. [13*—2]

In the Commissioner's Court for the Precinct of
Ketchikan, Territory of Alaska, Division Num-
ber One.

UNITED STATES OF AMERICA

vs.

JIM SIMPSON and JERRY SIMPSON.

Search-Warrant.

To the United States Marshal of the District of
Alaska, Division No. One, or Any Town Mar-
shal or Policeman for the Town of Ketchikan,
Alaska.

Proof by affidavit having this day been made
before me by Fred Handy, said affidavit stating
facts from which it appears that there is probably
cause to believe that the above-named defendants
have concealed and have in their possession and
under their control, in the following described
premises, namely, in that certain two-story frame
building situated at the southerly end of Front
street in the town of Ketchikan, Alaska, and known
and designated as the Northern Hotel and Bar and
in the lower story or ground floor thereof and par-
ticularly in that portion thereof known and desig-

*Page-number appearing at foot of page of original Certified Transcript
of Record.

nated as the "Dory," and in said Ketchikan Precinct, Alaska, alcoholic liquors;

You are therefore commanded to at once thoroughly search said described premises and the appurtenances thereof, in the day or night time, and if alcoholic liquors be found, to take into your possession and safely keep to be produced as evidence when required, all alcoholic liquors and all means of manufacturing or dispensing the same, also all the paraphernalia or part of the paraphernalia of a bar-room or other alcoholic liquor establishment and any United States Internal Revenue tax receipt or certificate for the manufacture or sale of alcoholic liquor, effective for the period of time between the first day of January, 1922, and the seventh day of January, 1922, and [14—3] forthwith report all facts to the United States Attorney or his deputy and bring all such alcoholic liquor and the means for dispensing the same, and the paraphernalia of a bar-room or other alcoholic liquor establishment or United States Revenue receipt or certificate, as aforesaid, before me to be disposed of according to law.

Given under my hand and official seal this seventh day of January, 1922.

A. W. FOX,
United States Commissioner and *Ex-Officio* Justice
of the Peace.

Returned and filed Jan. 13, 1921.

A. W. FOX,
U. S. Commissioner.

In the Commissioner's Court for the Precinct of
Ketchikan, Territory of Alaska, Division No.
One.

United States of America,
District of Alaska,
Division Number One.

Affidavit for Search-Warrant.

Fred Handy, being duly sworn, on oath, deposes and says: That he is a Deputy United States Marshal; that on the fifth day of January, 1922, in the Precinct of Ketchikan, District of Alaska, Division Number One, at Ketchikan, Alaska, the crime of manufacturing, storing, or depositing, offering for sale, keeping for sale or use, trafficking in, bartering, exchanging for goods, giving away or otherwise furnishing alcoholic liquor was committed, to wit, by Jim Simpson and Jerry Simpson.

And this deponent further says that on the fifth day of January, 1922, he watched the premises hereinafter described and occupied by said Jim Simpson and Jerry Simpson, and saw intoxicated men enter and leave said premises; that said [15—4] deponent saw intoxicated men in said hereinafter described premises and saw men deport themselves as under the influence of intoxication. And that he therefore has, and there is just, probable and reasonable cause to believe, and that he states as true, that said Jim Simpson and Jerry Simpson, now have concealed and in their possession and under their control in the following de-

scribed premises, viz., at that certain two-story frame building situated at the southerly end of Front street in the town of Ketchikan, Alaska, and known and designated as the Northern Hotel and Bar and in the lower story of floor thereof and particularly that portion thereof known and designated as the Dory and in said Ketchikan Precinct, alcoholic liquor, all of which is contrary to the form, force and effect of the statute in such cases made and provided, and against the peace and dignity of the United States of America, and this complainant prays that a search-warrant may issue for the search of said premises, commanding the officer to whom such search-warrant is directed to at once thoroughly search said described premises and the appurtenances thereof, and that if any such intoxicating liquor be found to take into his possession and safely keep the same to be produced as evidence when required, all alcoholic liquors and all the means of dispensing the same, also all paraphernalia or part of the paraphernalia of the bar-room or other alcoholic liquor establishment, and any United States Internal Revenue tax receipt or certificate for the manufacture or sale of alcoholic liquors, effective for the period of time covering such alleged offense, and forthwith bring the same before a magistrate to be disposed of according to law and report all the facts to the District Attorney or his deputy.

FRED HANDY.

Subscribed and sworn to before me this 7th day of January 1922.

[Seal]

A. W. FOX,
United States Commissioner and *Ex-officio* Justice
of the Peace. [16—5]

In the District Court for the Territory of Alaska,
Division Number One, at Ketchikan.

No. 757—KB.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JERRY SIMPSON,

Defendant.

Demurrer.

Comes now the defendant in the above-entitled cause and demurs to the complaint (information) herein, and also to the pleadings and proceedings herein for the issuance of the search-warrant and to the return thereon, and for cause of demurrer says that it appears upon the face of said pleadings:

I.

That said complaint (information) did not in said Justice Court below and does not in this court, or at all, state facts sufficient to constitute any crime cognizable by or within the jurisdiction of said Justice Court or this court.

II.

That this cause was not begun upon information

filed by the United States District Attorney, nor upon indictment by any Grand Jury of the Territory of Alaska, and the alleged complaint herein was without authority of law; that said Justice Court below had no jurisdiction over this defendant or the subject matter of the charge against him in said court, and its judgment and the sentence against defendant was and is void for want of jurisdiction.

III.

That this court has no jurisdiction over the person of this defendant in this case, nor over the subject matter of the charge against defendant. [17—6]

IV.

That the search and seizure of defendant's alleged property used as evidence against the defendant in the Justice Court in this case below, and upon which the complaint (information) herein was based, was made and said property seized and used as evidence, upon a search-warrant issued in violation of law, and without probable cause; that said search-warrant did not particularly describe the place to be searched, nor the persons or things to be seized, and said search-warrant and all proceedings connected with its issuance and return, were so issued and taken in violation of law, and the rights of this defendant under the Fourth and Fifth Amendments to the Constitution of the United States.

V.

That the proceedings in the Justice Court below

and the sentence of the Court against this defendant were had and rendered under the supposed authority of the Act of Congress entitled: "An Act to prohibit the manufacture or sale of alcoholic liquors in the Territory of Alaska, and for other purposes," approved February 14, 1917, 39 Stat. L. 903, and of some law referred to in the pleadings herein as the Alaska Bone Dry Law, Public 308; that said laws were repealed and rendered of no force or validity by the act of Congress entitled "An Act to prohibit intoxicating beverages and to regulate the manufacture, production, use, and sale of high proof spirits for other than beverage purposes, and to insure an ample supply of alcohol and promote its use in scientific research and in development of fuel, dye and other lawful industries," which said repealing act became a law on the 28th day of October, 1919, having on that and the preceding day been passed by the House and Senate of the Congress, by a [18—7] two-thirds vote of the houses voting in the affirmative over the President's veto; that said act of Congress of February 14th, 1917, and said Alaska Bone Dry Law, were also both repealed and rendered void and of no force or validity by the 18th Amendment to the Constitution of the United States.

Dated at Ketchikan, Alaska, February 10, 1922.

JAMES WICKERSHAM and

A. H. ZIEGLER,

Attorneys for the Defendant.

In the District Court for the District of Alaska
Division No. One, at Ketchikan.

No. 757—KB.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JERRY SIMPSON,

Defendant.

Order Overruling the Demurrer.

The demurrer in the above-entitled cause was called for argument on February 18, 1922, and, after the argument by counsel for plaintiff and defendant, and the Court being fully advised in the premises,

DOTH ORDER, that the said demurrer be, and the same hereby is, overruled, and the defendant is allowed an exception to such order of the court.

Dated at Ketchikan, Alaska, March 1, 1922.

THOS. M. REED,
Judge.

Filed in the District Court, District of Alaska,
First Division. March 1, 1922. J. H. Dunn, Clerk.

Entered Criminal Journal No. 5, page 29.
[19—8]

Proceedings of Court Had May 22, 1922.

Monday, May 22, 1922.

Court met pursuant to adjournment at 10 A. M.

Judge WICKERSHAM.—May it please the Court, before we proceed with this case, there is a motion filed in this case, as there was in the other case, and I desire to make an objection also.

The COURT.—Very well.

Judge WICKERSHAM.—The motion before was to suppress the testimony because of the defects pointed out in the affidavit and in the search-warrant in this case. The Court overruled the motion, so far as the other case is concerned—that is, in the case of the United States *versus* J. B. Simpson, but the Court, as I understand it, in this case, has not passed on it except in that general way in connection with the other case.

The COURT.—Is the motion based on exactly the same state of facts?

Judge WICKERSHAM.—Why I think so.

The COURT.—Similar affidavit?

Judge WICKERSHAM.—Similar affidavit, so Mr. Ziegler says. If the jury could be withdrawn, there is another preliminary matter that could be settled.

The COURT.—Well, the jury may retire.

(Whereupon the jury retired in charge of the bailiff.)

Judge WICKERSHAM.—We desire to have the Court make a formal ruling in the matter, as it did

before, so that we can take an exception to it, and then I want to present another matter.

Mr. ZIEGLER.—I understand the motion to suppress the testimony is identical with the motion in the other case, but I am not sure about that.

The COURT.—The motion will be denied to suppress the evidence at the present time.

Judge WICKERSHAM.—I desire, then, to make a further objection— [20—9]

Mr. ZIEGLER.—(Interrupting.) Pardon me; we take an exception.

Judge WICKERSHAM.—Yes; we take an exception.

The motion is as follows: (Reads:)

“In the District Court for the Territory of Alaska,
Division No. 1, at Ketchikan.

757—KB.

“UNITED STATES OF AMERICA,
Plaintiff,
vs.

“JERRY SIMPSON,
Defendant.

Motion of Jerry Simpson to Suppress Testimony.

“Comes now Jerry Simpson, the defendant hereinabove named, and the jury being duly empaneled and sworn, before the first witness was called or sworn, and before any witness was offered for examination by the prosecution, and objects to any further proceedings in this case or to the introduction of any testimony herein by the prosecution.

“I.

“Because upon its face the complaint upon which this case is based shows that it does not state facts sufficient to constitute a crime, nor sufficient to charge this defendant with having committed any crime.

“II.

“Because all the evidence in this case against this defendant was secured by an unreasonable and illegal search of premises adjoining those occupied by this defendant at the time of the alleged crime, upon a search-warrant issued and served in violation of this defendant’s rights under the fourth Amendment to the Constitution of the United States, because the affidavit upon which said search-warrant was based did not show or pretend to state facts showing any probable cause to believe that this defendant had committed any [21—10] crime or had in his possession any evidence of any crime so committed by himself or anyone else, and because under the said insufficient affidavit a search-warrant was issued authorizing a search on adjoining premises not in the possession or under the control of this defendant, and with which neither he nor his place of business had any connection whatever; and, because all the evidence so found under said affidavit and search-warrant were found thereunder on adjoining premises not described or mentioned in the search-warrant so issued and premises not under the control or management of defendant.

“III.

“Because all evidence in this case was obtained

by officers for the United States, after they had gained possession and control of this defendant's premises, while acting under a warrant which did not in any manner describe or authorize a search of, any premises belonging to or under the management or control of this defendant, and which said officers remained in possession and control of this defendant's place of business, against his protest, after abandoning the search thereof, until such time as a new search-warrant could be obtained, authorizing a search of property alleged to be under the control of this defendant.

“IV.

“Because that part of the Alaska Bone Dry Act which defines the mere possession of intoxicating liquors as a crime is unconstitutional and void, and the Eighteenth Amendment to the Constitution does not vest in Congress the power to punish the mere possession of intoxicating liquors, and the prohibiting of the mere possession of intoxicating liquors is not a valid exercise of the police powers vested in the Congress.

(Sgd.) WICKERSHAM & ZIEGLER,

“Counsel for Defendant.”

[Endorsed]: “Filed in the District Court, District of Alaska, First Division. May 23, 1922. John H. Dunn, Clerk. By W. B. King, Deputy.” [22—11]

The COURT.—I don't care to hear any argument. What are your statements as to the affidavit based on? What are your statements based upon

in that motion, that the evidence was secured in this case on the first search-warrant? Is there any evidence in the case as to that?

Judge WICKERSHAM.—I don't know what the evidence will be. We think so. You have heard this case before Mr. Ziegler.

Mr. ZIEGLER.—We don't claim that the evidence was secured on the first search-warrant, but we claim that the evidence secured cannot be used, because they gained admission to the defendant's property on the first search-warrant, which did not describe the property and that the officers remained in possession of his premises over his protest—

The COURT.—(Interrupting.) Do you mean to tell the Court that the United States marshal remained in possession of these premises?

Mr. ZIEGLER.—The United States marshal directed certain people to retain possession of these premises until they could get another warrant. That is what we set up in the second motion—that they later came back with another warrant and found the evidence that they intend to use in this case.

The COURT.—Is that a fact?

Mr. MALTBY.—No; it is not a fact, so far as the Government's case is concerned.

The COURT.—You may show that in your evidence in the case.

Mr. ZIEGLER.—We have filed an affidavit stating that that is a fact.

The COURT.—Yes; but the marshal's return is otherwise.

Judge WICKERSHAM.—We note an exception to the ruling of the Court. [23—12]

The COURT.—The motion will be denied.

You may call the jury in.

(Whereupon the jury returned to the jury-box.)

A jury, having been empaneled, accepted and sworn, opening statements were made to the Court and jury by Mr. A. E. Maltby, on behalf of the plaintiff, defendant in error, and by Mr. James Wickersham on behalf of the defendant, plaintiff in error.

Whereupon the plaintiff, to maintain the issues on his part, introduced the following evidence, to wit: [24—13]

Testimony of Fred E. Handy, for Plaintiff.

FRED E. HANDY, called as a witness on behalf of plaintiff herein, having been first duly sworn, was examined and testified as follows:

Direct Examination.

(By Mr. MALTBY.)

Q. Just state your name.

A. Fred E. Handy.

Q. What official position do you hold in the Territory?

A. Deputy United States Marshal.

Q. Stationed at Ketchikan? A. Yes, sir.

Q. I will ask you if you know the defendant, Jerry Simpson? A. Yes, sir.

Q. Were you in Ketchikan on the seventh day of January last? A. Yes, sir.

(Testimony of Fred E. Handy.)

Q. I will ask you if you know where the place called the Dory is? A. Yes, sir.

Q. Where is it?

A. It's on the south end of the street running past the Stedman Hotel and the Revilla Hotel.

Q. In the town of Ketchikan?

A. In the town of Ketchikan.

Q. I will ask you if you ever saw the defendant, Jerry Simpson, in the premises described as the Dory? A. Yes, sir.

Q. I will ask you if you have ever had occasion to go there to examine, to make an examination of the licenses? A. Yes, sir.

Q. Did you make such an examination?

A. Yes, sir.

Q. In whose name did you find the license for the conducting of that business, do you remember?
[25—14]

A. It was in Jerry Simpson's name.

Q. I will ask you if, upon the seventh day of January, 1922, you had occasion to go to the premises that you have just mentioned?

A. Yes, sir.

Q. Under what authority did you go?

A. Search-warrant.

Q. And to whom did you present or read the search-warrant? A. Jerry Simpson.

Q. I will ask you if you read the search-warrant?

A. I read the search-warrant.

Q. I direct your attention, now, Mr. Handy, to the— Well, I'll withdraw that question. How

(Testimony of Fred E. Handy.)

many search-warrants were issued against that place on that day? A. Two against that building.

Q. I will ask you if you proceeded to make a search of the premises under the first search-warrant? A. Yes, sir.

Q. And did you afterwards desist in that search?

A. Yes, sir.

Q. Upon whose advice?

A. District Attorney Maltby.

Q. Upon my advice? A. Yes, sir.

Q. Now, then, after you desisted in searching those premises, did you then leave the premises?

A. Yes, sir; went down to the hotel—Revilla Hotel.

Q. I will ask you who was assisting you in that search at that time.

A. Chief of Police McIntosh and Patrolman McDonald. [26—15]

Q. Any person else at that time?

A. Under the first search-warrant?

Q. Yes. A. That's all; just the three of us.

Q. Just the three of you?

A. No; Dobbs and two customs officials.

Q. Speak up a little louder.

A. The customs officials.

Q. Chief of Police McIntosh, Mr. McDonald, who was patrolman, Mr. Dobbs, Mr. Woodruff, who were the customs officials? A. Yes, sir.

Q. And yourself? A. Yes.

Q. Now, I'll ask you if after desisting in the

(Testimony of Fred E. Handy.)

search under the first search-warrant, if you all left the premises? A. Yes, sir.

Q. You say that you all left?

A. All of us; yes.

Q. Yes. Now, then, I'll ask you if you returned later on to search those premises under another search-warrant? A. Yes, sir.

Q. I will ask you to state whom you saw on going there under your second search-warrant?

A. The proprietor.

Q. Who was that?

A. Mr. Simpson and Jake were there.

Q. To whom did you present the search-warrant that time? A. To Mr. Simpson.

Q. Jerry Simpson? A. Yes, sir.

The COURT.—Speak up louder. [27—16]

Q. Did you proceed to make your search under that search-warrant? A. Yes, sir.

Q. What was the result of your search?

A. About 1,250 bottles of beer.

Q. You seized 1,250 bottles of beer?

A. About that. We got about 1,250 bottles. There were some broken ones.

Q. Who assisted you in that search?

A. Rutherford was additional and Dobbs was called in later on.

Q. Just who was with you?

A. Chief of Police McIntosh and Patrolman McDonald, Rutherford the game warden, Dave Rutherford, and Dobbs later on, after we had found

(Testimony of Fred E. Handy.)

some beer. I met him out in front and called him in to assist.

Q. What became of the beer that was seized in that search?

A. Brought up to the federal jail, federal building.

Q. I will ask you to look at the bottles that are on this table and state what they are and where they came from.

(Witness steps down from stand and examines bottles.)

A. This is supposed to be beer, and this is some of the bottles that were in that—

Q. (Interrupting.) Are these the bottles, or some of the bottles, that you found and seized?

Judge WICKERSHAM.—Now, I object to counsel's leading the witness.

Mr. MALTBY.—I'm not leading him.

The COURT.—Yes; objection sustained.

Q. Well, where did you get these bottles? Where did this stuff come from?

A. Come from the storeroom of the Dory. [28—17]

Q. Under what search-warrant?

A. Under the second search-warrant.

Q. Under the second search-warrant. And in whose possession have these bottles been since that time?

A. In the marshal's possession.

Q. In the marshal's possession?

A. In my possession.

(Testimony of Fred E. Handy.)

Q. I will ask you to look at these two bottles (indicating) and state what, where they came from?

A. These (examining) are two of the bottles that were taken out and marked—taken from the bunch of bottles that were seized.

Q. From the Dory? A. From the Dory.

Q. Now, at the time that you made this search, did you see Mr. Jerry Simpson, the defendant, at any time? A. Yes, sir.

Q. Where was he in reference to the place that you were searching?

A. He was in there the biggest part of the time.

Q. In there the biggest part of the time. Just state to the jury what place or places you searched under that search-warrant?

Judge WICKERSHAM.—Now, I object. I think the search-warrant ought to be produced. The search-warrant is the best evidence. The search-warrant and return are provided for by law and we object to any testimony in respect to them without they produce them before the jury.

The COURT.—Objection overruled.

Judge WICKERSHAM.—Exception.

The COURT.—(To Witness.) You may state what places you searched. [29—18]

A. I searched the back room, the big storeroom, which has a lot of wood in, and some tables and barrels of soft drinks—a general storeroom, and in the back end of that was a nailed-up—there was a piece of beaver board over the door and some other boards, and I tore that off and went back

(Testimony of Fred E. Handy.)

farther and found twenty sacks of beer in the back room, where an addition had been built on.

Q. Now, was Mr. Jerry Simpson, the defendant, present at that time?

A. Yes, he was present. He was in the store-room. He wasn't in the back room at the time.

Q. Did you search this storeroom that you speak of?

A. McIntosh and McDonald— I was present when they were moving wood and discovered the first bunch of beer.

Q. Did Mr. Simpson make any objections to your searching the storeroom?

A. He protested when I asked for the— I asked the Jap whose place this was, and the Jap said it was Jerry's, and I asked Jerry to open the door and he said, "Well, it's not mine. I protest," and I said, "Jerry, I'm going to go in there. If you want to save the door, all right." "Well," he said, "if you'll let one of the officers go with me, I'll get the key"; and so he and Mr. McIntosh went and got the key and he opened the door himself voluntarily—not voluntarily, but under protest.

Judge WICKERSHAM.—Now, I object to that statement, may it please the Court and move to strike it out.

The COURT.—What part?

Judge WICKERSHAM.—That part in which he says that he protested and objected to it, and so forth. He's drawing a conclusion. He doesn't state any fact. [30—19]

(Testimony of Fred E. Handy.)

Mr. MALTBY.—Well, as I understand the witness, if your Honor please, he said that the defendant protested to him in the opening of the storeroom.

The COURT.—Objection overruled. He may state what he said.

Q. State what the defendant said?

Judge WICKERSHAM.—Exception.

A. He said, "If you'll let one of the officers go with me, I'll open it, under protest."

Q. Did he go with the officer?

A. Yes, sir; he and Mr. McIntosh.

Q. Did he afterwards come back?

A. He come back and unlocked the door himself.

Q. He unlocked the door himself?

A. Yes, sir.

Q. And in whose presence did he unlock the door, if you remember?

A. McDonald and myself and McIntosh, and I think Rutherford was present at the time he opened the door.

Q. Did you then search the storeroom?

A. Yes, sir. McDonald and McIntosh moved the wood and found—I was one of the parties that helped to search.

Q. What did you find in the storeroom?

A. We found beer in three different places under the wood-pile; I think about twenty and some odd sacks.

Q. Twenty and some odd sacks under the wood-pile?

(Testimony of Fred E. Handy.)

A. Yes; I wouldn't be positive as to the number of sacks. I know it was six sacks in one place and I think 18 in another, as near as I can remember.

Q. Now, did you see the defendant Jerry Simpson at any other time during this search in that part of the building that you were searching? [31—20]

A. Yes, sir.

Q. And did you see him doing anything?

A. He came in there after a scuttle of coal.

Q. Did you see him get the coal? A. Yes, sir.

Q. Did you see him leave that part of the building where you were searching, with the coal?

A. Yes, sir.

Q. In what direction did he go?

A. He went into the Dory—out of the storeroom and around.

Q. Did he afterward come back again?

A. Yes, he came back after that.

Q. What did he do, if anything, when he returned?

A. Well, he stood there and watched the officers in the search.

Q. Did he say anything after his return?

A. Well, just one time, about a few minutes before we were through searching, he told McDonald and McIntosh, in my presence, "Well, I see you're going to get it, so I'll show you an easier way to get it"; so he picked out a bunch of slabs out of the part of the wood that was corded up—part of the wood was corded up—and he pulled out a lot of slab,

(Testimony of Fred E. Handy.)

or directed them, I don't know which one of them, and took out a bunch of slabs.

Q. And after his directing the officers, what did he do? Did you see them get anything from under the wood-pile? A. Yes, sir.

Q. What did you see?

A. There was a number—I wouldn't say just how many sacks, but there were some sacks of beer brought up from under that.

Mr. MALTBY.—That's all. [32—21]

Cross-examination.

(By Judge WICKERSHAM.)

Q. Mr. Maltby, what time of the day was it that you first went down with the first search-warrant?

Mr. MALTBY.—Excuse me, Judge, but I'm not on the witness-stand.

Q. Did I call him Mr. Maltby? Well, I meant Handy. A. I think about two o'clock.

Q. How long did you remain down there that time, under the first search-warrant?

(Witness hesitates.)

Q. Oh, not exactly.

A. I would say an hour; possibly an hour and a half. I don't know. Time in a case of that kind is hard to keep track of.

Q. Then, what did you do?

A. On the first search-warrant, I called the District Attorney down on his advice, we desisted from searching any farther.

Q. Where had you searched under that first search-warrant?

(Testimony of Fred E. Handy.)

A. I searched behind the bar and then the little two rooms back. One is a kind of bar-room, where they had a table—

Q. (Interrupting) Now, with reference— I'll ask you this question: with reference to the front of the Dory, where had you search backward?

A. Straight back.

Q. Straight back. You hadn't searched in that part of it under the roof of the Northern during that time? A. No.

Q. Just searched straight back. And you think that took you an hour? [33—22]

A. Well, I would think about an hour.

Q. Then you left there, under that first search-warrant, about three o'clock?

A. Possibly later; possibly four or three-thirty; something like that—four o'clock. I wouldn't say exactly the time.

Q. How long after you left then, did you get the second search-warrant?

A. Just as quick as Mr. Maltby could make it out.

Q. Where did Mr. Maltby make it out?

A. Up at the courthouse.

Q. Had you telephoned to him?

A. No, he was down there.

Q. You telephoned to him to come down there?

A. Yes, under the first search-warrant.

Q. Yes. And he came down and examined the first search-warrant?

A. Yes. I don't know as he examined the first search-warrant at the Dory, but he advised me to stop searching.

(Testimony of Fred E. Handy.)

Q. Then, you say you all left? A. We all left.

Q. How long were you gone?

A. Oh, I don't think we were gone over fifteen minutes—ten minutes.

Q. Were you gone ten minutes?

A. I think we were.

Q. You think you were all gone ten minutes?

A. Well, ten or fifteen minutes.

Q. Now, isn't it true that in the testimony which you gave before the commissioner in this case, you testified as follows: "I asked Mr. Maltby for another search-warrant, and he said he would get it, and he did. We stayed there—the police force and myself, and then later, when I searched the store-room [34—23] in back of the Northern, I found five different bunches of sacks, containing about 1,250 bottles of Canadian beer. Some of it was under the wood-pile? Didn't you testify to that?

A. Yes, I guess I did. I testified that we were there.

Q. Well, you testified "we stayed there"?

A. No; we didn't stay in the building all the time; no.

Q. But you testified that in the other case?

A. I wouldn't be positive that I testified just that way.

Q. You are positive you didn't?

A. I am not positive that I didn't; no.

Q. But you don't think you were gone longer than ten minutes? A. About ten or fifteen minutes.

Q. And all the officers were gone during that ten or fifteen minutes?

(Testimony of Fred E. Handy.)

A. They were all gone as long as I was, because we all went back together.

Q. Where did you go when you left there?

A. Went up to Revilla Hotel.

Q. The Revilla Hotel? A. Yes.

Q. That is about two hundred feet away?

A. Oh, about that; yes.

Q. And then returned; as soon as Mr. Maltby came back with the other warrant, you resumed your search?

A. No, I came up and got the search-warrant.

Q. Oh, you came up and got the search-warrant?

A. Up to the courthouse.

Q. Isn't it true you didn't come back with the second search-warrant for about three hours after you made the first examination? [35—24]

A. It isn't true.

Q. It isn't true? A. No.

Q. Well, you say you remained there about two hours under the first search-warrant?

A. Well, an hour to an hour and a half, I said. I wouldn't be positive as to the time under the first search-warrant.

Q. And you didn't search anything during that period, except that portion of the Dory back of the front of the Dory?

A. Not under the first search-warrant.

Q. Not under the first search-warrant. Now, that consists of one large front room and two smaller rooms in the rear, does it not?

A. Yes, sir.

(Testimony of Fred E. Handy.)

Q. And they were open?

A. No; they were locked.

Q. No, I am not talking about the two rooms in the rear of the Northern; I am talking about the rooms in the Dory, behind the front of the Dory, or rather back from the front of the Dory.

A. One of the rooms was a bar-room and it was locked up.

Q. And you were there about an hour and a half?

A. About that.

Q. And you were gone about ten or fifteen minutes before you resumed the search?

A. About that.

Q. And you were not sure whether you said, Mr. Handy, in this case, before the commissioner, that you and the police force remained there?

A. What did you say?

Q. I said, and you are not sure that you said, in your testimony before the commissioner, in this case, that you and [36—25] the police force remained there during that period?

A. We were about the building.

Q. I said, you are not sure that you testified to that?

A. No, I'm not sure that I testified to that.

Q. Well, you are not sure that you didn't, are you? A. No, I wouldn't be—

Q. (Interrupting.) I will ask you to just read that portion of your answer there (handing document to witness) opposite the marked place and see

(Testimony of Fred E. Handy.)

if that recalls your testimony to you before the Police Commissioner, or magistrate.

A. (After reading.) That is about what I testified.

Q. That is about what you testified. We have read that into the record. Now, when you went back with the second search-warrant, you left that part of the premises immediately back of the front of the Dory did you not and made a search under the roof of the Northern, the adjacent building?

A. Yes, sir; we searched the rooms that we had not already searched.

Q. Yes, but under the roof of the Northern?

A. Yes, sir.

Q. They were not under the roof of the Dory?

A. No, but they were connected.

Q. They were immediately back of the front of the building known as the Northern, isn't that true? A. Back of the front; yes.

Q. They were under the roof of the Northern, were they not? A. Yes, sir.

Q. Now, immediately back of the Northern, isn't it true that there are two small buildings?

A. Connected. [37—26]

Q. With the Northern? A. With the Northern.

The COURT.—With the Northern Building?

WITNESS.—Yes.

The COURT.—You must make a distinction between the Northern Building and the Northern.

Q. Is there a Northern Building there and the Northern, or isn't it just one building?

(Testimony of Fred E. Handy.)

A. There's two buildings joined. The Dory and the Northern Building are joined and there's doors running through in two or three or four different places.

Q. Where are those doors?

A. There is one over to the further end of the building.

Q. Did you ever go through that place at the further end of the building—that door connecting the two buildings there? A. Yes, sir.

Q. How far is it from building to building at that point?

A. From building to building—they're practically one building; that is, it's all boxed up, so that you are going from one room into another one.

Q. Yes, but the north wall of the Northern is how far from the main south wall of the Dory at that place? Isn't there considerable space between them right there?

A. It is not visible from the inside, to tell just what the space is.

Q. You have been through there?

A. I searched in between the walls.

Q. So, it is wide enough to search in there?

A. Since this search has been made—

Q. (Interrupting.) Then you know that there is about two feet [38—27] from the north wall of the Northern to the south wall of the Dory, don't you—two or three feet at that place?

A. At the place that I went through?

A. Yes; in the front part?

(Testimony of Fred E. Handy.)

A. In the front part, yes, there's a door which opens out of the forward end of the Dory to the stairway that goes upstairs.

Q. And the buildings are two or three feet apart at that place, aren't they, but walled up so that you pass through from one into the other?

A. Yes, sir; they are walled up.

Q. Now, down where the bar is, isn't it true that there is a space cut into the south wall of the Dory at that place and that the north wall of the Northern is back of the bar? Do you remember that situation?

A. The lunch-counter or the bar?

Q. Under the lunch-counter; yes.

A. There is a space in there, under it, I think—the space runs against that one building and opposite into the Northern Building.

Q. Is it the same width there that it was in front?

A. I think it is; yes; about the same.

Q. Now, back where the water-closet is, which was used both from the Dory and from the Northern by an entrance from each side, isn't that water-closet within the space between the Dory and the Northern?

A. I believe the water-closet itself is; yes.

Q. It is in that space? A. I believe it is.

Q. Yes. And there is an opening from the Dory into that water-closet and also an opening from the other side, from the [39—28] Northern into that water-closet? Isn't that true? A. Yes, sir.

Q. Now, this big room that you say you searched,

(Testimony of Fred E. Handy.)

where you found the beer, or part of the beer, is under the roof of the Northern? A. Yes, sir.

Q. And is not under the roof of the Dory at all?

A. It is not under the roof of the building which the Dory sign is on.

Q. That's what I mean. But there is a door through back there, you say?

A. Yes; there are two or three doors; there's two or three, I wouldn't say—a couple of them.

Q. Now, wasn't that big door which you were talking about, just to the east of the water-closet, solidly nailed up when you went there to make that search? A. Yes; it was nailed up.

Q. Now, there was another door back there, opening into Jake's room, farther back?

A. There was a door there; yes.

Q. Now, there was another side door from the Dory in the back, in the alley, or into the alley, back of the Dory, isn't there? A. Yes, sir.

Q. In other words, the Dory ran full length of the lot from Front Street back to the alley, the same width that it has on its frontage, isn't that true?

A. Yes, I think so.

Q. And isn't it true that the Northern ran the full width of these two cabins which are attached to the back of the Northern to the alley? [40—29]

A. Yes, sir.

Q. The Northern is a two-story building?

A. Yes.

Q. And the Dory is a one-story building?

(Testimony of Fred E. Handy.)

A. A story, or story and a half. I think it is one story.

Q. There is an upstairs to it?

A. No; I don't think so.

Q. You didn't search any upstairs in there?

A. No; I didn't find a way to get up.

Q. Now, in this room, back of the Northern, where you found this beer under the wood, who do you say produced the key to that?

A. Jerry Simpson.

Q. Jerry Simpson. You made a demand for the key?

A. I didn't make a demand. I told him that if he wanted to save the door that he could unlock it—that I was going in there and search.

Q. What did he say?

A. He said, "If you'll just let one of the officers go with me, I'll get the key."

Q. Where did they go?

A. They went back into the other building, back through the toilet. I don't know where they went to.

Q. You don't know where they went to of your own knowledge? A. No.

Q. But they brought the key back?

A. Yes. McIntosh was with him.

Q. McIntosh was with him and they brought the key back? A. Yes.

Q. And then you went into the storeroom with the key?

A. He opened the door and I went in. [41—30]

(Testimony of Fred E. Handy.)

Q. Now, did you get into Jake Saunders' room at any time, at the rear of the Northern?

Mr. MALTBY.—I object to that as incompetent, irrelevant and immaterial and not cross-examination.

Judge WICKERSHAM.—Oh, yes, it is. He said they found beer in there.

The COURT.—Yes.

Mr. MALTBY.—There is nothing in the evidence so far to show that they got into Jake Saunders' room.

The COURT.—Yes, I think, Judge Wickersham, you better call his attention to the situation of the room.

Judge WICKERSHAM.—I'll offer a map for identification, may it please the Court, of these buildings. It was offered below. I ask to have it marked in this case for identification.

The COURT.—Mark it No. 1 for identification. Is there any designation on it?

Judge WICKERSHAM.—Yes; I'll show it to the Court first.

Mr. ZIEGLER.—It was an exhibit in the lower court.

The COURT.—(After examining map.) No evidence can be given—cannot be taken in evidence with those marks and the designations on it. It cannot be taken as part of the evidence.

Judge WICKERSHAM.—No; I was just going to ask about the location of these rooms.

The COURT.—Oh, yes.

(Testimony of Fred E. Handy.)

Judge WICKERSHAM.—I was just going to ask him about the location of these rooms.

Q. Can you understand this, Mr. Handy (handing map to witness)? Here is Front Street marked here and this is Mill Street marked here on the side. This is drawn to represent the Northern and this the Dory. Now, I want to ask you about the location of Jake Saunders' cabin back there. Do you [42—31] know where that is without any reference to the map?

A. Jake Saunders' cabin is not in sight. It is in the corner of this building (indicating).

Q. You are sure about that?

A. I am not sure, but it is the room he claimed.

Mr. MALTBY.—Now, if the Court please, we'll object to any evidence as to Jake Saunders' room for the reason that it is incompetent, irrelevant and immaterial and not cross-examination.

Judge WICKERSHAM.—Oh, well—

Mr. MALTBY.—(Continuing.) And doesn't prove any of the issues in this case.

Judge WICKERSHAM.—Only this: they have testified to finding beer in these rooms and I am trying to get them located.

The COURT.—Well, he has testified as to finding beer in the room back of the storeroom where the wood was.

Judge WICKERSHAM.—Yes; this is the room back here, one of them.

The COURT.—Now, you can ask him in what room they found it.

(Testimony of Fred E. Handy.)

Q. Now, with respect to finding beer in the room back of the woodshed or place where you found the beer, where else did you find the beer—part of this beer that you have here?

A. Besides what we found—

Q. Yes, besides what you found in what is called the wood and storeroom here.

A. In this room (indicating).

Q. In this room marked what?

A. It isn't marked.

Q. Marked Harry Wiley's cabin.

A. In the back room? [43—32]

Q. Yes, in the back room. Now, how much beer did you find there?

A. About twenty sacks there in one pile. I don't think this map is correct.

Q. I show you this picture (handing picture to witness). Can you locate that room on that picture, on that photograph?

A. I can tell about. It's the room in from this door, directly back, straight in from this door.

Q. How far back from that door?

The COURT.—Mark it with an A.

Q. Mark the door that you are talking about with an A.

(Witness does so.)

Q. Now, how far back from that door did you find the beer?

The COURT.—You better have that picture marked for identification.

(Testimony of Fred E. Handy.)

A. It was the width of the room. I wouldn't be sure.

Q. It was in the room to which this was the door?

A. Yes, sir.

Q. Now, we offer this photograph, may it please the court, for identification and ask to have it marked.

(Photograph received and marked for identification.)

Q. How many bottles of beer did you find in that room—that is this room right here (pointing) on the corner? A. Twenty sacks.

Q. Two or three sacks. A. Twenty sacks.

Q. Oh, twenty sacks? A. Yes.

Q. How many bottles in each sack?

A. I couldn't say. When I got them up here the next morning, [44—33] I emptied all the sacks and counted the bottles.

Q. How did you get through this door from the wood and storeroom into this cabin?

A. This door had a big sheet of beaver board—

Q. (Interrupting.) Mark that door B, won't you?

(Witness does so.)

A. (Continuing.) —nailed over the door, coming into this room. I noticed the beaver board and I took an axe and pried— I think there were some other boards there, too, to hold the beaver board up—

Q. (Interrupting.) How high was this beaver board above you?

(Testimony of Fred E. Handy.)

A. It was, I think, down through the floor. I wouldn't be positive. I think it covered, completely covered the door.

Q. Wasn't crosswise of the door?

A. No; I know it wasn't crosswise.

Q. Now, you say you found twenty sacks of beer in there, in this room that you spoke about?

A. Yes, sir.

Q. Now, did you find any other beer at the rear of the Northern in this other building known as Jake Saunders' cabin?

A. Jake Saunders' cabin? It seemed to me that Jake Saunders' room was in the corner of this building.

Q. Did you find any beer in it?

A. No, we didn't find any beer in it.

Q. What did you find in there?

Mr. MALTBY.—We object, if the Court please, what they found. They didn't search it under the second search-warrant.

Q. Did you find any intoxicating liquor there?

Mr. MALTBY.—We object, if the Court please, as irrelevant, incompetent and immaterial.

The COURT.—Yes, I think so. [45—34]

Judge WICKERSHAM.—Now, the purpose is to show that this beer and all this intoxicating liquor all belonged to this other man, Jake Saunders.

Mr. MALTBY.—Now, the witness has stated that they didn't find anything under the second search-warrant and that is what we're proceeding under.

Mr. ZIEGLER.—But, in that connection, if the

(Testimony of Fred E. Handy.)

Court please, this witness has testified all about acting under the first search-warrant. Now, I don't think that he should be permitted to testify to a part of his actions and then have the court protect him with reference to the rest of his actions under that search-warrant. He says he met with resistance, that his man protested and they got another warrant. Now, I think that he ought to be permitted to tell about the whole transaction under that first search-warrant if he is to testify in regard to any of them.

The COURT.—I don't think so. I sustain the objection.

Mr. ZIEGLER.—We take an exception.

Judge WICKERSHAM.—Exception.

Q. Now, with respect to finding beer under the second search-warrant, did you find any beer back under the main building of the Northern except that which you found in Wiley's cabin?

A. Yes, there was another room in which we found three sacks, I think.

Q. Where is that room, if you can point it out on this chart? A. This room here.

Q. Mark that C, right in the middle of it.

A. Right there (marking as directed).

Q. Now, I call your attention again to this photograph which has [46—35] been filed here for identification, marked Defendant's Exhibit No. 2, and ask you if there isn't a second door to that room connecting the Northern Building?

(Testimony of Fred E. Handy.)

Mr. MALTBY.—We'll object, if the Court please, as irrelevant.

Judge WICKERSHAM.—We want merely to locate where he found this beer, that's all.

The COURT.—He may answer. Objection overruled.

A. We gained admission to that room through another door adjoining the Northern Building.

Q. Yes, I know.

A. We never used this door (pointing).

Q. Let me ask you this question—

A. (Interrupting.) This door was never unlocked.

The COURT.—He asked you if there wasn't a second door?

The WITNESS.—Yes.

The COURT.—(Continuing.) Entering from that side of the alley.

The WITNESS.—From that side of the alley?

Q. From that side of the street.

The COURT.—From that side of the street.

Q. You marked the first one with an A, did you not? A. Yes.

Q. Mark the second one.

A. The other door to this room was inside of the building.

Q. But on the outside. There was two doors there, Mr. Handy, on the outside.

A. I never noticed any in the building.

Q. But it's there.

(Testimony of Fred E. Handy.)

A. It shows on the outside, but I don't believe it shows from the inside. [47—36]

Q. Mark that second one D.

Mr. MALTBY.—We object to that unless he knows.

A. Well, I don't know, except from that photograph.

Q. Then, if you don't know, you don't swear to it, of course. But there are two rooms, are there not, in that back building where you found the twenty bottles of beer?

A. Yes, there's two rooms.

Q. What was in this room next to the Northern Building?

A. As I said, there was, I think, three sacks.

Q. Three sacks in that?

A. In this room (indicating).

Q. Where you found the beer.

Mr. MALTBY.—Just what room was that?

Judge WICKERSHAM.—It was in that room C, that you marked here.

A. It was in this room marked C.

The COURT.—C.

Judge WICKERSHAM.—Room C marked on this map.

Q. Now, you found three sacks of beer there?

A. Yes.

Q. What kind of sacks were they?

A. Oh, just gunny-sacks.

Q. What kind of sacks did you find in this wood and storeroom? A. Gunny-sacks.

(Testimony of Fred E. Handy.)

Q. All alike?

A. Well, practically alike; not all exactly alike.

Q. Was there any difference in the beer that you found in the Wiley cabin and what you found in this wood and storeroom?

A. I couldn't say as to that.

Q. It wasn't all Canadian beer?

A. All the beer that was seized was all Canadian beer. [48—37]

Q. It was? A. Yes.

Q. Now, let's come back to this wood and store-room. The day that you were there, what was in that storeroom? There (indicating) is the store-room. Now, you tell the jury as fully as you can everything that was in that storeroom at that time.

A. There was a big pile of wood which run up pretty near to the ceiling, and piled up on one side. Then there were some barrels of soft drinks of several kinds; and I think there was a card-table, pool-table, up agin the wall.

Q. Counters and trunks?

A. Yes, I believe there was a trunk, one trunk, up in the corner.

Q. What else can you remember that you saw there? A. I can't recall just now.

Q. It was pretty full of all this kind of material, wasn't it?

A. Along one side there was a little stuff that looked like the stuff that they use in a bar-room.

Q. It was evidently used as a wood and store-room? A. It was used as a wood and storeroom.

(Testimony of Fred E. Handy.)

Q. You say there was coal in there?

A. Yes; there was coal in one corner.

Q. See any old tables in there?

A. Saw a card-table and a billiard-table.

Q. How many billiard-tables did you see in there?

A. Well, I'm not sure.

Q. Weren't there three? A. I couldn't say.

Q. Don't you know that two of them have been taken out since and taken to the Elks? [49—38]

A. I don't know.

Q. Do you know whether they were knocked down or set up, ready for use?

A. Oh, no; they weren't set up for use. I'm not positive about the billiard-table, but it was a part of a billiard-table, some part of it.

Q. And a large amount of other material that you haven't mentioned?

A. Well, there wasn't such a great deal.

Q. There wasn't such a great deal? The room was pretty full of this stuff, wasn't it?

A. Full of wood; I would say ten or fifteen cords of wood in there.

Q. What sort of wood was it? A. Slab wood.

Q. Slab wood. How long was it sawed up?

A. Different lengths. I would say from fourteen to 22 inches in length; maybe 24—different lengths.

Q. Do you know what business was conducted immediately in front of this wood and storeroom, Mr. Handy? North of the wood and storeroom, where did you come into?

(Testimony of Fred E. Handy.)

A. Came into the hallway?

Q. Into the hallway? A. Yes.

Q. About how wide was that hall?

A. Oh, four or five feet.

Q. And then immediately across from the door that you come out into that hall, was there another door? A. Yes, sir.

Q. Where did that take you?

A. Into the noodle joint.

Q. The noodle joint? [50—39]

A. The Jap's.

Q. Do you know whether the Jap had any wood in there or not, or any things?

A. I don't know anything about that. He claimed that it wasn't his storeroom.

Q. He claimed it wasn't his storeroom?

A. No.

Q. But you don't know whether he had any material or truck of any kind in there or not?

A. No, I don't know that he didn't have anything in there.

Q. Now, how many different packages—I mean how many different places did you find beer in in those rooms?

A. Those back—the additions or cabins?

A. Yes.

Q. Two.

Q. In two of those rooms at the back of the building you found beer? A. Yes.

Q. That's off the Northern? A. Yes.

Q. And where else did you find it?

(Testimony of Fred E. Handy.)

A. In the wood and storeroom?

Q. Yes, in the wood and storeroom.

A. In the wood.

Q. Were those the only two places that you found any beer in? A. Yes.

Q. Those three rooms?

A. Yes, sir. As I said, I don't believe this map is correct.

Q. You don't believe that map is correct?

A. According to the lower floor of the Dory.

Q. Where do you think that it is incorrect, Mr. Handy? [51—40]

A. In regard to this main building of the Dory, Jake Saunders' room projects out from the main wall, like this (showing on map).

Q. Way out into the card-room back of the Dory?

A. Back of the Dory and this is the room in which Jake Saunders has a bed in and claimed as his room. At that time there was no— It was searched under the first search-warrant, but—

Q. (Interrupting.) Well, now, let me ask you this question: You think this room back here (pointing) marked as Jake Saunders' cabin, extended out into the card-room of the Dory and across that line (pointing)?

A. Jake Saunders' room extended out into the same room, the same as this (indicating) does here.

Q. Yes.

A. And a part of it, anyway, extends out into this main big room of the Dory.

Q. Under the roof of the Dory?

(Testimony of Fred E. Handy.)

A. Yes; under the roof— No, it isn't under the roof of the Dory. Saunders' room is under the shed roof, but apparently looks the same from the inside; that is, part of his room comes out into the Dory.

Q. You think, then, Mr. Handy, that Jake Saunders' room back there is on the left-hand side, on the Dory side, which is the general line that runs between the two buildings? A. A part of it is.

Q. A part of it. Are you sure about that?

A. Yes, I am quite positive of that. This line (indicating), take it from the street, running between the two buildings straight to the rear, the corner of Jake Saunders' room went out into this big room the same as this (indicating) does. [52—41]

Q. It is an offset, you think, of what is marked the "big room, the big card-room" of the Dory?

A. Yes, sir.

Q. You think that? A. Yes.

Q. You feel as well satisfied about that location as you do with the other locations of things you have made here? A. Well, I am positive.

Q. You're positive?

A. Yes; it projects out into the big room.

Q. You think then, that it is on the Dory lot then, the Jake Saunders cabin?

A. A part of it—that is, the cabin, the room that Jake Saunders occupied in which he has a bed and claimed it was his.

Q. You think that's on the Dory lot?

(Testimony of Fred E. Handy.)

A. Yes, sir.

Q. You are sure about that?

A. Yes, sir; I'm sure.

Q. But you are sure the cabin that you have marked here as the cabin C, that is, immediately back of the Northern Building, in back of the Northern, I mean, not back of the Dory?

A. What? The same cabin marked "Saunders' room"?

Q. No, the other one—the one that you marked C, next to the street. Didn't you mark one C there?

A. I think so.

Q. Here (pointing) is Mill Street.

A. Yes; that is back of the—

Q. (Interposing.) That is back of the Dory.

A. The Northern.

Q. I mean back of the Northern. And you say, then, that Jake Saunders' room isn't immediately back of the Northern? [53—42]

A. Not all of it.

Q. Not all of it.

A. I don't believe any of it.

Q. You don't believe any of it?

A. No; his room isn't—the room he occupied.

Q. Were you in that room? A. Yes.

Q. Did you find any beer in there?

Mr. MALTBY.—We object to that as incompetent, irrelevant and immaterial.

The COURT.—Objection sustained. It's been ruled on once.

Judge WICKERSHAM.—It has been ruled on

(Testimony of Fred E. Handy.)

as to the other liquors, but not as to the beer. I asked him if he found any intoxicating liquor there, but as to the beer, I didn't know that the Court had ruled.

The COURT.—Well, any liquor would include beer. The term liquor would include beer.

Judge WICKERSHAM.—It might. I'm not an expert on that. We'll note an exception anyway.

Q. Do you know where this beer here on the table came from?

A. Came from that place. It was among the 1,250 bottles that was seized there.

Q. Do you know whether that beer came from the Wiley cabin that you have marked C or whether it came from the storeroom?

Mr. MALTBY.—We object to that as immaterial.

Mr. ZIEGLER.—I think it is very material, if the Court please.

The COURT.—Yes; objection overruled. It was all mixed up together. [54—43]

Q. I asked you if you knew where that came from, whether it came from the storeroom or whether it came from the Wiley cabin marked C.

A. No, I couldn't be positive which room those particular bottles came from.

Q. You don't know what room those bottles came from? A. No.

Q. Mr. Handy, you say that after you ceased operations under the first warrant, you telephoned to Mr. Maltby and you got a second warrant. Did

(Testimony of Fred E. Handy.)

you come up to sign the affidavit for that second warrant? A. I come up; yes.

Q. Where did you sign it?

A. In the courthouse here; I'm not positive. I think I signed it. He wouldn't give me a search-warrant without I signed it.

Q. Well, I want you to be sure about it. You're thinking now. Don't you know?

A. No; I'm not positive. I was in a hurry at the time.

Q. Isn't it true that you didn't sign that affidavit until after you had completed all these searches?

A. It's not customary—

Q. (Interrupting.) I didn't ask you what was customary.

The COURT.—You can answer that by yes or no.

A. I don't think it was. I don't think that was the case. I don't know, but I am positive I never do that.

Q. If you don't know, that is enough. You say, then, that you don't know whether you signed this affidavit before the warrant issued, or after you got back from the service of the warrant? I don't want you to misunderstand me. The second warrant, I mean. [55—44]

The COURT.—The second warrant?

Judge WICKERSHAM.—Or the second affidavit to the second warrant.

Q. I ask you now if you signed it before the warrant was served and you made that search down there, or after you got back?

(Testimony of Fred E. Handy.)

A. I don't just remember at this time anything about the method.

Q. You say it was ten or fifteen minutes before you returned with the warrant, the second warrant?

A. I didn't say that.

Q. Well, you said you were gone ten or fifteen minutes. A. We left the place.

Q. After the second warrant?

A. After the first warrant, we left the place and was away from the place ten or fifteen minutes.

Q. And then you returned with the second warrant?

A. No, I didn't return with the second warrant.

Q. You returned without the warrant?

A. It was a public place. We went down there quite often.

Q. Oh, I see. How long were you there in that public place before you had the second warrant?

A. I couldn't say.

Q. Two hours? A. Oh, no.

Q. Now, isn't it true that you waited there for two or three hours? A. No; it isn't true.

Q. It isn't true? A. No.

Q. What were you doing?

A. Mac and I were around the building at different places. We figured that there was liquors in there that they might [56—45] try to get them out.

Q. You stayed there?

A. We stayed around the street.

Q. Now, isn't that why you said in your affidavit,

(Testimony of Fred E. Handy.)

in your testimony before the commissioner on the trial of this case below, that “we stayed there—the police force and myself”? Isn’t that why you testified that?

A. We didn’t stay in the building.

Q. You didn’t stay in the building? A. No.

Q. So that what you testified to there wasn’t true?

A. We didn’t stay in the building all the time. We were in and out.

Q. So I say, that wasn’t true, then, what you said there?

A. No, I wouldn’t say that it wasn’t true.

Q. Who were you there with—you and the police force that you mentioned in your testimony?

A. When we started the second search?

Q. No, during the time that we’re talking about now, between the time you quit under the first search-warrant and the time you got the second warrant. Who was there with you?

A. We went back there about fifteen minutes after we quit with the first warrant and we walked in—

The COURT.—(Interrupting.) Well, he asked you who was there with you.

Q. The police force and Rutherford—four of us.

Q. There were four of you? A. Yes.

Q. And you remained there until the second warrant came?

A. No, no; I didn’t. I don’t know about the others.

(Testimony of Fred E. Handy.)

Q. Where did you remain? [57—46]

A. I was around the building, out in the street.

Q. In and out? A. In and out and around.

Q. Were you up to the courthouse during that time?

A. I was up to the courthouse to get the search-warrant.

Q. During that ten or fifteen minutes that you were gone? A. Oh, no.

Q. Now, when were you up to the courthouse?

A. I was up to the courthouse, come up and got the search-warrant and went right into Jerry Simpson's and proceeded to do the searching. We got it, I said, as quickly as it could be made up. He phoned me when he had it ready.

Q. And then you came up and got it and went back? A. Yes.

Q. Who remained there while you were gone?

A. McDonald and Rutherford were watching the trap where there had been some beer, and I don't know what else, something dropped from the trap when I opened the trap there under the first search-warrant.

Q. They were there under your instructions?

A. We told him that when the tide went out, we were going to get—

Q. (Interrupting.) I said, they were there under your instructions? A. Yes.

Q. And that trap was in the side of the building, wasn't it? A. Yes.

(Testimony of Fred E. Handy.)

Q. And that was before the second warrant came back?

A. Yes, that was before we got the second warrant.

Judge WICKERSHAM.—I think that's all.
[58—47]

Redirect Examination.

(By Mr. MALTBY.)

Q. Now, Mr. Handy, at the time of the first search-warrant, or at the time that you abandoned your search under the first search-warrant, did you and those who assisted you in your search leave the premises that you were then in? A. Yes, sir.

Q. And how long was it before you returned to those premises?

A. I was back there in about ten or fifteen minutes.

Q. You were back in there in ten or fifteen minutes? A. Yes, sir.

Q. What was your purpose in going back?

Judge WICKERSHAM.—Oh, I object. That's immaterial.

Mr. MALTBY.—It seemed to be very material to you a moment ago. You were asking him all about it.

The COURT.—He may answer.

A. My purpose was to wait for the tide to go out and get some beer that had been dropped from a trap or trip that I tripped myself. I unlocked it, in unlocking the door, I pulled the trip and let it fall down on the flats or in the bay, and the tide was

(Testimony of Fred E. Handy.)

in and I wanted to wait until the tide got out. When the tide went out, I wanted to get whatever it was that was on the beach.

Q. Now, then, after you abandoned the first search under the first search-warrant, under my instructions, there was another search-warrant procured, wasn't there? A. Yes, sir.

Q. Now, Mr. Wickersham asked you when you signed the affidavit upon which that search-warrant was procured. He asked you whether it was signed after you received the search-warrant or before you received the search-warrant. Now, state the fact to the jury as to when you signed your affidavit, [59—48] either as to whether it was before you got the search-warrant or afterwards?

A. Well, I don't remember of ever signing an affidavit after the search-warrant—

Mr. ZIEGLER.—We object to that—

Judge WICKERSHAM.—Now, then, I object to that and move to strike it out as not responsive to the question.

The COURT.—He can state.

Judge WICKERSHAM.—Exception.

Q. I show you this affidavit and ask you if that is your signature? A. Yes, sir.

The COURT.—Strike out his last answer as not responsive.

Q. I'll also show you this (exhibiting document) and ask you if you know what that is.

A. Search-warrant.

Q. Issued by whom?

(Testimony of Fred E. Handy.)

A. A. W. Fox, United States Commissioner.

Q. I will ask you if you can identify that paper?

A. Yes, sir.

Q. Whose signature is attached to that paper?

A. Fred E. Handy.

Q. What is it?

A. The return of the warrant by the officer serving the same.

Q. Now, then, this affidavit (showing) the affidavit for the search-warrant which I am showing you now, who is that signed by?

A. Myself, Fred Handy.

Q. When did you sign that affidavit in reference to the issuance of the search-warrant?

A. I signed it before the search-warrant was issued.

Q. You are sure of that? [60—49]

A. I'm sure I never signed any affidavit after the search-warrant was issued.

Q. Now, in the search that you made of these premises, under the second search-warrant, you procured a certain quantity of, or procured some bottled beer in where the wood was piled up in the back end of the building where you were searching, isn't that right? A. Yes, sir.

Q. Now, about how much, or where was that beer that you procured at that particular place?

A. Under the wood-pile.

Q. Under the wood-pile. About how much wood was there piled there?

(Testimony of Fred E. Handy.)

Judge WICKERSHAM.—I object, may it please the Court. Counsel went into that in his main case and we didn't make any cross-examination of it.

The COURT.—Yes, objection sustained as not redirect examination.

Q. But you found beer under that wood-pile, though, didn't you? A. Yes, sir.

Q. Now, just where was that storeroom, where this wood was piled? I think it is described in defendant's plat as the wood storeroom, or something of that kind.

Mr. ZIEGLER.—Wood and storeroom.

Judge WICKERSHAM.—Counsel can have this plat.

Q. Where was that in reference to the main part of the Dory? A. The wood storeroom?

Q. Yes.

A. It was in the—it was right by the side of the Dory Building. It was right on the south side of the Dory Building.

Q. Was Mr. Simpson in there with you when that beer was taken from under the wood-pile?
[61—50]

Judge WICKERSHAM.—Now, may it please the Court, I object to this line of questioning.

Mr. ZIEGLER.—It is not redirect examination.

The COURT.—Oh, you have already gone into that. It has been answered as to whether he was in there on your redirect, on your direct examination, you asked him.

(Testimony of Fred E. Handy.)

Q. Now, this particular storeroom that counsel has asked you about on cross-examination, and which he described, I think, as Jake Saunder's room, who opened that room for you?

A. Jake Saunders opened his own room.

Q. His own room? A. Yes.

Q. Now, then, this room known as the storeroom, who opened that room for you?

A. Jerry Simpson. The big storeroom.

Q. The big storeroom. And how did he open it?

Judge WICKERSHAM.—Now, may it please the Court, we object. That's not cross-examination. That's all been gone into.

The COURT.—Yes, Mr. Maltby.

Mr. MALTBY.—It was all brought out again on cross-examination.

The COURT.—No, he didn't ask him anything about that—who opened the door, at all. The examination was as to the location of rooms, where the doors were situated and where the different rooms were situated and where the beer was found in the different rooms.

Mr. MALTBY.—That'll be all.

Judge WICKERSHAM.—That's all.

(Recess until 3:45 P. M. this day.) [62—51]

Testimony of T. W. McDonald, for Plaintiff.

T. W. McDONALD, called as a witness on behalf of the plaintiff herein, having been first duly sworn, was examined and testified as follows:

Direct Examination.

(By Mr. MALTBY.)

Q. Your name is T. W. McDonald?

A. Yes, sir.

Q. Do you live in Ketchikan, or were you living in Ketchikan on the seventh day of January last?

A. Yes, sir.

Q. What position did you hold at that time?

A. City patrolman, night patrolman, Ketchikan.

Q. Do you know the defendant, Jerry Simpson?

A. Yes, sir.

Q. Do you know Fred E. Handy, deputy United States marshal? A. Yes, sir.

Q. Do you know Lonnie McIntosh?

A. Yes, sir.

Q. State, if you know, what position Mr. McIntosh held on the seventh day of January, 1922?

A. Chief of Police in Ketchikan.

Q. I will ask you if you know where the building or place known as the Dory is? A. Yes, sir.

Q. Where?

A. On the south end of Main street, on the left-hand side going down.

Q. In the town of Ketchikan?

A. Ketchikan, yes, sir.

Q. I will ask you if you had any occasion to go

(Testimony of T. W. McDonald.)

to the Dory officially on the seventh day of January, 1922? A. Yes, sir.

Q. What was the purpose of your visit there? [65—54] A. To search the building.

Q. And did you make a search of the premises, or assist in making the search of the premises at that time?

A. Yes, sir; I assisted Deputy Marshal Mr. Handy.

Q. I will ask you, Mr. McDonald, if you know how many search-warrants were issued for that building on that day? A. Two.

Q. I will ask you if you worked with Mr. Handy, the Chief of Police and others under the first search-warrant? A. Yes, sir.

Mr. ZIEGLER.—If the Court please, I would just like to make the formal objection that all these questions are very leading. He was an officer that day, and let the counsel ask him as to what he did, and not lead him.

The COURT.—I think it is preliminary. He simply asked him if he assisted. Now, he can state what he did under the first search-warrant.

Q. Now, I understood you to say that you assisted under the first search-warrant?

A. Yes, sir.

Q. Do you know whether or not the search under the first search-warrant was abandoned or not?

Judge WICKERSHAM.—Now, I object, may it please the Court. Let the witness testify.

(Testimony of T. W. McDonald.)

The COURT.—Ask him if he knows.

A. Yes, sir; I know that it was abandoned.

Q. I will ask you, Mr. McIntosh, I will ask you Mr. McDonald, if after the abandonment of the first search-warrant, you and the rest of the officials left the building? A. Yes, sir; we left.

Q. I will ask you how long after you left the building before [66—55] you went back again, if you did go back?

A. It was pretty close to an hour.

Q. Pretty close to an hour? A. Yes, sir.

Q. When you returned to the building, did you return under a search-warrant or not?

A. No, sir.

Judge WICKERSHAM.—Well, now, I object to that. Don't get so swift. When there is an objection, wait. I object, may it please the Court. That is leading again.

The COURT.—Yes, I think so.

Q. Why did you go back, Mr. McDonald?

A. The deputy marshal told Rutherford and I to go back.

Q. When did you return?

A. About an hour after we went back there for the purpose of—

Judge WICKERSHAM.—(Interrupting.) Now, I object to that. He can testify.

Q. What was your purpose in going back?

A. To wait for the tide to go out.

Q. Why were you waiting for the tide to go out?

(Testimony of T. W. McDonald.)

A. We thought there was some liquor underneath the building.

Q. That was a continuation of the search—

Judge WICKERSHAM.—Now, if the Court please, I object to that.

Mr. ZIEGLER.—That is a question of law and not a conclusion for him to draw.

Mr. MALTBY.—Well, you were saying it so everybody could hear, so I thought I'd ask him.

Mr. ZIEGLER.—I didn't intend to, Mr. Maltby.

Q. Now, Mr. McDonald, did you again leave the building? A. No; we didn't leave. [67—56]

Q. Did you assist in the second search that was made under the second search-warrant?

A. Yes, sir.

Q. Who else assisted in that search, if you know?

A. Deputy Marshal Fred Handy, Chief of Police Lonnie McIntosh and the game warden, Dave Rutherford.

Q. Were you there at the time— I will ask you this question first: Who presented the search-warrant? A. Deputy Marshal Fred Handy.

Q. Were you there when he presented it?

A. Yes, sir.

Q. To whom did he present it?

A. To Jerry Simpson.

Q. To Jerry Simpson. What did you do in the assisting under that second search-warrant?

A. We searched the premises.

Q. What was found?

(Testimony of T. W. McDonald.)

A. Sixty sacks of beer.

Q. Do you know what became of that beer?

A. Yes, sir.

Q. What?

A. It was taken up to the courthouse by the marshal.

Q. Did you, in assisting under the second search-warrant, uncover or— Well, I'll withdraw that question. Counsel will think it's leading. Did you, in assisting under the second warrant, find any beer? A. Yes, sir.

Q. Where did you find it?

A. Underneath some wood in the storeroom.

Q. Where was that in reference to the bar in the Dory?

A. Well, it was to the rear of the Dory, the building where the bar is, and then to the right. [68—57]

Q. Was Mr. Jerry Simpson, the defendant, present at any time during the search? A. Yes, sir.

Q. And was he present at this particular place where you found this beer? A. Yes, sir.

Q. What, if anything, did Mr. Jerry Simpson, the defendant, do or say while you were searching for this beer?

A. In the first place, he protested against us going in.

Q. Yes.

A. And the deputy marshal asked him if he owned the place and he says "No," and then he

(Testimony of T. W. McDonald.)

asked the Japanese that was there who owned the place, who owned the room—

Judge WICKERSHAM.—Now, I object to what the Jap said.

A. He—

Judge WICKERSHAM.—Now, wait a moment. I object to what the Jap said.

The COURT.—Yes. You needn't state what the Jap said—simply hearsay.

Q. Now, who assisted you at this particular place to make this search?

A. The Chief of Police.

Q. Mr. McIntosh? A. Yes.

Q. What were you doing?

A. We were uncovering the beer that was underneath some wood.

Q. What were you doing with reference to the wood. A. Throwing it to one side.

Q. Throwing it to one side. Was Mr. Jerry Simpson, the defendant, present at that time?

A. Yes, he was there most of the time, in and out. [69—58]

Q. Did Mr. Jerry Simpson say or do anything while you and Mr. McIntosh were taking down this wood? A. Yes, sir.

Q. What?

A. We was throwing the wood off the top and it was a lot of work and he said, "Well, you've got me anyway; I'll show you an easier way to get at that," and he showed us the combination.

Q. What was the combination?

(Testimony of T. W. McDonald.)

A. Several slabs of wood were nailed together and we just pulled them out to one side, and there was a kind of a trap in there and we found three or four sacks of beer in there.

Q. And he stated to you, "You've got me anyway"?

Judge WICKERSHAM.—Now, I object to counsel's repeating it.

The COURT.—He can answer.

Judge WICKERSHAM.—Let the witness say.

Q. And he stated to you, "You've got me any- and I'll show you an easier way to get at it"?

The COURT.—You can ask him what he did say.

A. "You have got me anyway."

Mr. MALTBY.—That's what I said.

Judge WICKERSHAM.—No, you said, "You have me." There's a distinction there.

Q. What was the result of your find there?

A. Four sacks of beer.

Q. Four sacks of beer. A. Yes.

Q. Now, Mr. McDonald, while you were uncovering this beer under the wood-pile, did you notice anything else around that particular part where you were making your search of the premises? [70—59] A. Yes, sir.

Q. What was it?

A. We noticed wood; we noticed beer, after we found it, and there was a trap-door in the floor that had just been built and some paraphernalia for hoisting something from under the building.

Q. Underneath the building? A. Yes, sir.

(Testimony of T. W. McDonald.)

Q. While you were procuring that beer and making your search there with Mr. McIntosh, did you notice the defendant Jerry Simpson come back to that part of the building?

A. Yes, sir; he came back several times; on one occasion he got caught on something. He was leaving the place and fell over a stick of wood. It sounded like a pail or something he had, and he dropped it.

Q. He dropped it?

A. I didn't notice, but I heard him swear a little when he fell.

Q. Did the defendant Jerry Simpson say anything in regard to the wood that you were uncovering?

A. I said, "What do you do with all the wood?" and he said, "We burn it."

Mr. MALTBY.—That's all.

Cross-examination.

(By Judge WICKERSHAM.)

Q. What kind of wood was it that he said they burned? A. Slab wood.

Q. How long?

A. Various lengths—from one foot to maybe 18 inches, as near as I can remember.

Q. Just ordinary length firewood was it?

A. Yes, sir. [71—60]

Q. And so Jerry fell at some time when he was there? A. Yes, sir.

Q. Now, you went down there with the officers under this first search-warrant? A. Yes, sir.

(Testimony of T. W. McDonald.)

Q. How long did you stay there, Mr. McDonald, under that first search-warrant?

A. Oh, I imagine we were there about, oh, about three-quarters of an hour or an hour.

Q. About three-quarters of an hour or an hour. You don't think it was longer than an hour?

A. No, I am not sure it wasn't longer than an hour.

Q. Was it that long?

A. About three-quarters of an hour.

Q. About three-quarters of an hour. Then you went away? A. Yes, sir.

Q. How long were you gone?

A. We was gone pretty near an hour or two.

Q. Where were you during that time?

A. McIntosh and I took a walk around town and then later we was at the Revilla for some time. We met Rutherford there and Handy.

Q. They came to you finally? A. Yes.

Q. Do you know where they had been during that time? A. No, I don't.

Q. When you went back the second time, how long did you remain there?

A. Well, we were there for quite a long while. We had quite a lot of work to do. I imagine it was, during the time we were searching there, we were there until pretty close to eleven o'clock.

[72—61]

Q. At night? A. Yes.

Q. How long was it after you went back this

(Testimony of T. W. McDonald.)

second time before the search-warrant came under which you resumed the search of the premises?

A. Rutherford and I were in the Dory, oh, about, we were there in about an hour, I would say, and Handy and McIntosh came with a search-warrant.

Q. Now, you went down there about two o'clock?

A. No; it was later than that.

Q. Oh; it was later than that. What time did you get down there?

A. The first time we went down there, it must have been about four.

Q. About four o'clock? A. Yes.

Q. It wasn't two o'clock? A. No, sir.

Q. And you remained there about three-quarters of an hour this first time? A. Yes, sir.

Q. And then you went away and you think you remained away an hour?

A. Pretty close to an hour.

Q. You and the other policeman? A. Yes, sir.

Q. And do you know where these other men were? A. No—

Q. (Interrupting.) Of your own knowledge, now, I'm talking about. A. Sure.

Q. Then you went back after about an hour?

A. Yes, sir. [73—62]

Q. And that brought you back there about what time?

A. I don't know just about what time of the day it was. I know it was pretty close to four o'clock when we went in on the first search-warrant because—

(Testimony of T. W. McDonald.)

Q. (Interrupting.) Well, then, if you were three-quarters of an hour, that would make it fifteen minutes to five. Then you were away an hour. That would bring you to fifteen minutes to six?

A. Yes, sir.

Q. And then you remained there until eleven o'clock?

A. Yes; we had a lot of work to do there; a lot of wood—

Q. (Interrupting.) Lots of wood to move?

A. Yes.

Q. Now, you said you were moving wood there and Jerry was present? A. Yes, sir.

Q. What did he say to you, just exactly, as near as you can remember? You testified, but I would like to have you repeat it.

A. He showed us the combination, for one thing.

Q. I didn't ask you that. I asked you what he said.

A. Well, he said, "You've got me anyway." We was working up on top, throwing away a lot of wood, and he wanted to show us an easier way to get at it.

Q. What did he show you?

A. He showed us the combination in the side. The wood was piled up and there were several slabs nailed together and we both pulled it out together. You could notice—

Q. (Interrupting.) He was just showing you how to pull it away. You were awkward about it, and he was just showing you an easier way, is that it?

(Testimony of T. W. McDonald.)

A. No; it was all nailed together. [74—63]

Q. Have you been in the habit of moving wood?

A. I have moved quite a lot of it.

Q. You don't think that you were awkward about it and Jerry was trying to show you how to move it?

A. His system was way quicker than ours.

Q. He was standing there, looking at this bunch of wood, wasn't he? A. He was watching it.

Q. And you saw that it was nailed together?

A. No, sir; we didn't see it. That was all—

Q. (Interrupting.) You didn't see it?

A. No, sir; that was all finish nails. You couldn't see them.

Q. Did you pull it out? A. He helped me.

Q. He helped you? A. Yes, sir.

Q. He took hold of it and what did he say?

A. He showed me an easier way.

Q. But what did he say?

A. He said, "I'll show you an easier way to get at it."

Q. "Show you an easier way to get at it," and then he took hold of this bunch of wood and pulled it out?

A. Yes, we both took a hold of it and pulled it out.

Q. What else did he say?

A. I asked him later on what he done with all the wood and he said "We burn it."

Q. "We burn it." Now, you spoke something about watching for something underneath the building until the tide went out.

(Testimony of T. W. McDonald.)

A. Under the first search-warrant, yes.

Q. Under the first search-warrant? A. Yes.

Q. What were you looking for there when the tide went out? [75—64]

A. I couldn't say whether it was under the first search-warrant or not. It was after we searched and I was back there and Mr. Handy told us to wait there until the tide went out, or wait around there.

Q. And you were waiting in the Dory?

A. Yes, sir; inside of the Dory.

Q. Did you wait until the tide went out?

A. And there were two or three others around there, too.

Q. Did you wait until the tide went out?

A. We was waiting until the tide went out.

Q. What did you find?

A. We didn't quite wait long enough. Handy came back there with the second search-warrant.

Q. Then you didn't find anything when the tide went out?

A. Well, we started to search the place.

Q. Well, now, I asked you if you found anything when the tide went out?

A. We didn't look; we didn't wait that long.

Q. You were upstairs in the Dory, watching, waiting until the tide went out?

A. Upstairs? No, sir.

Q. Well, you were in the main building. You were not down on the beach? A. No.

Q. You were in the Dory proper?

(Testimony of T. W. McDonald.)

A. The Dory proper; yes, sir.

The COURT.—Where were you in the Dory?

The WITNESS.—Right in the main—

The COURT.—(Interrupting.) The public place?

The WITNESS.—Yes, sir; two or three others in there, too.

Q. Were you in the back room? [76—65]

A. I don't know whether you would call it the back room or not. It's a card-room. There's some card-tables there. It's a part of the public—

Q. It is partitioned off from the main room of the Dory, isn't?

A. There is a kind of a partition, yes; on one side. There's no doors.

Q. Did you remain in the same place all the time? A. Yes.

Q. You remained in this back room?

A. In the card-room; yes.

Q. What was in that room?

A. Well, card-tables.

Q. What else?

A. I think there was a billiard-table, too. I am not positive about that.

Q. A billiard-table. And then when the new or second warrant came back, you went into this wood and storeroom? A. Yes, sir.

Q. There's where you found the beer?

A. Yes, sir.

Q. Did you find all the beer in that wood and storeroom?

A. Well, all I helped find was in that storeroom.

(Testimony of T. W. McDonald.)

Q. Didn't you see the beer found in the other rooms? A. I seen it after it was found.

Q. But you weren't present when it was found?

A. No, sir.

Q. So that you didn't see the beer in those rooms at all? A. No, sir.

Q. Didn't you see the beer before they took it out of those rooms?

A. Yes, sir; I helped to move it. I think they moved it out where they could, in the back room, so that they could get [77—66] it on to the truck.

Q. As a matter of fact, you took all that beer out that back way? A. Yes, sir.

Q. All of it out through the Wiley cabin?

A. Didn't look much like a cabin to me.

Q. It didn't?

A. I couldn't say that it was Wiley's cabin or not.

Q. You couldn't say that it was Wiley's cabin. Well, you know where that cabin is, don't you?

A. I know that there is a room in the back there; yes, sir.

Q. I show you now Defendant's Exhibit No. 2 and ask you to look at this part of the building shown back, immediately in front of the telephone post, with the letter A marked on the door. Is that the door through which you took all the beer?

A. Yes, sir; that's the door.

Q. That is the door? A. Yes.

Q. Why did you take it out that way?

A. Easier, easiest way to take it out.

(Testimony of T. W. McDonald.)

Q. It would be the easiest way to get in too?

A. I think they have an easier way.

Q. But that is the way you took it out?

A. That is the way we took it out.

Q. Now, you know whose cabin that is, with the letter A marked—

Mr. MALTBY.—(Interrupting.) We object to that as irrelevant and immaterial.

Q. Did you see the beer that was found in the cabin.

A. Yes, I seen some of the sacks. [78—67]

Q. In the cabin?

A. Not right in the cabin. I don't know whether it was right in the cabin or not. I think it was moved out by Handy and McIntosh.

Q. Moved out where? You mean out into the room?

A. Out into the hallway there, close to the water closet.

Q. You said into the room?

The COURT.—He said into the hallway.

Q. What hallway do you refer to?

A. I think it's a hallway. It's right close. There's a toilet there (indicating).

Q. Well, let's see. This is Mill Street here (indicating) and here is Front Street, and this is the Harry Wiley cabin, with two rooms in it.

A. Is this (indicating) Mill Street?

Q. Yes. This is the back alley (indicating).

A. Well, I think the beer was in here, when I seen it (indicating).

(Testimony of T. W. McDonald.)

Q. I wish you would take this pencil and mark that E, about where you saw it on that chart.

A. It's over here.

Q. Mark it with a small E. Make a small E there with the lead pencil; in that corner room, that is where you saw it?

A. I think that's about it. I wouldn't be sure, though. It looks like it.

Q. Did you find any beer in this room marked C?

A. No, I found beer up in here.

Q. All that you found was in this back room marked wood and storeroom? A. Yes, sir.

Q. Did you find any beer in Jake Saunders' cabin? A. No, sir. [79—68]

Q. You didn't find any in there?

A. I didn't pay very much attention to this, in fact, because Handy and the Chief of Police found that. I didn't pay much attention to it at all. I just noticed it—gave it a passing glance.

Q. But you saw the beer there? A. Yes, sir.

Q. Now, when you were in this wood and storeroom with Jerry and this beer was found and Jerry assisted you in pulling this wood down, didn't he say to you that there was no beer there and laughed at you and offered to bet you there wasn't any beer there, and you were discussing the matter in a friendly way? Do you remember that?

A. No, I can't say that I recall anything like that.

Q. Jerry said what he did out of nothing except out of pure conversation? A. Yes, sir.

(Testimony of T. W. McDonald.)

Q. Well, are you sure that Jerry didn't say there was no beer there and laughed at you?

A. I don't see how he could say—

Q. (Interrupting). Well, I'm not asking you how he could say it; I'm asking you whether or not he did say it. A. He had the beer.

Q. You didn't have the beer when you were having this conversation?

A. I can't recall that he said anything like that.

Q. You can't recall that? A. No.

Q. All right. That's all.

Mr. MALTBY.—That's all.

(Witness excused.) [80—69]

Testimony of Lonnie McIntosh, for Plaintiff.

LONNIE McINTOSH, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination.

(By Mr. MALTBY.)

Q. Your name is Lonnie McIntosh?

A. Yes, sir.

Q. Were you living in Ketchikan on the seventh of January last? A. Yes, sir.

Q. What official position did you hold at that time? A. Chief of Police, Ketchikan.

Q. Do you know the defendant, Jerry Simpson?

A. I do.

Q. Do you know where the premises are, known as the Dory? A. I do.

Q. Will you please say where they are located?

(Testimony of Lonnie McIntosh.)

A. Down the south end of Main Street, on the corner.

Q. In the town of Ketchikan? A. Ketchikan.

Q. Do you know Mr. Handy, the deputy United States marshal? A. I do.

Q. And Mr. McDonald? A. I do.

Q. I will ask you if you know what Mr. McDonald was doing on the seventh day of January last?

A. Night patrolman for the city of Ketchikan.

Q. I will ask you if you had occasion to go to the premises that you have mentioned, the Dory, on the seventh day of January, 1922? A. Yes, sir.

Q. And under what authority, if any, did you go there?

A. Under the authority of a search-warrant.
[81—70]

Q. With whom did you go?

A. Deputy Marshal Handy.

Q. About what time was it that you went?

A. Why, it was in the afternoon, around three or four o'clock.

Q. And did you proceed to make a search of the premises under that search-warrant?

A. Yes, sir; we did.

Q. Did you cease your search under that search-warrant—

Judge WICKERSHAM.—I object, if the Court please. Counsel is leading the witness entirely.

The COURT.—Well—

Judge WICKERSHAM.—I know it's easier.

(Testimony of Lonnie McIntosh.)

The COURT.—You may ask if he did. This is the original search-warrant?

Mr. MALTBY.—The first search-warrant.

The COURT.—He may answer.

A. We abandoned the first search-warrant; yes.

Q. Did you leave the premises after you abandoned the first search-warrant?

A. Yes, we did.

Q. Do you know if any of the officers who were assisting under the first search-warrant remained in the building?

A. Not at that time; no, sir.

Q. How long, if you can state, after you left the building, under the first search-warrant, did you return?

A. We returned around an hour, I believe it was.

Q. About an hour afterward? A. Yes.

Q. What was your purpose in returning?

A. We returned to wait for the tide to go out to get some booze that dropped— [82—71]

Judge WICKERSHAM.—(Interrupting.) Now, I object to that. It's simply his conclusion, and I object to it. The witness ought not to be allowed to state anything of that kind.

Mr. ZIEGLER.—There is no evidence of that kind.

The COURT.—Yes.

Judge WICKERSHAM.—I move to strike his answer out.

The COURT.—Well, a part of it. Strike out the last part of it.

(Testimony of Lonnie McIntosh.)

Q. Just state, Mr. McIntosh, what your purpose was in going back?

A. We went back there to wait for the tide to see what it was that dropped down from the trap-door.

Q. Where was this trap-door?

A. In the rear end of the Dory; in the back of the Dory.

Q. How long did you stay there? Who was with you at that time?

A. Fred Handy, Deputy Marshal, Patrolman McDonald, Dave Rutherford, the game warden, and myself.

Q. How long did you stay there at that time?

A. We stayed there for a few minutes and then Mr. Handy and myself went outside and we looked around outside for a while.

Q. Now, did you again—did you have occasion to go to the Dory again after that?

A. Yes, sir; we did.

Q. Under what authority?

A. Under the authority of a search-warrant.

Q. With whom did you go?

A. Deputy Marshal Handy.

Q. Did you assist in making the search under that search-warrant? [83—72]

Judge WICKERSHAM.—Now, may it please the Court, I want to object to this search-warrant. This witness testified that they went back under the search-warrant to search these premises, etc. Now, the best evidence of that is the search-war-

(Testimony of Lonnie McIntosh.)

rant. The search-warrant will describe the property. This witness can't testify what is in that search-warrant in that way. It seems to me that we're entitled to have those search-warrants put in here.

The COURT.—You can put them in when you get to your defense. Objection overruled.

Judge WICKERSHAM.—We object. Exception.

The COURT.—You may state what you did.

Q. What did you do then, Mr. McIntosh, when you went there with the deputy marshal under the second search-warrant?

A. We searched the premises.

Q. What premises? A. Of the Dory.

Q. Will you please state what the result of your search was?

A. We found something like fifty or sixty sacks of beer.

Q. Who assisted you, if anyone, in making the search?

A. Deputy Marshal Handy and Patrolman McDonald and Dave Rutherford and myself searched the place.

Q. Did you find any beer?

A. Yes, found some beer hid in the wood-pile,—McDonald and myself.

Q. Where was this wood-pile located?

A. It was located in the storeroom.

Q. In the storeroom of what? A. The Dory.

Q. Did you see the defendant, Jerry Simpson, around there at any time? A. I did. [84—73]

(Testimony of Lonnie McIntosh.)

Q. Where was he at the time that you were making your search under the wood-pile?

A. He was in there, looking at us.

Q. I will ask you if Mr. Simpson, the defendant, said anything to you while you were working there?

A. Yes; we were uncovering the wood-pile, and it was taking us quite a long time, and Jerry said, "I'll show you an easier way. You've got me, any way." So he pulled out some slabs that were nailed together, that made a kind of a little tunnel, and we found, I think, three or four sacks of beer in there.

Q. Did you see Mr. Simpson at any other time while you were making that search?

A. Well, he was in, off and on.

Q. Did you—do you know where the storeroom is located on those premises? A. I do.

Q. I will ask you if you assisted in the search of that storeroom? A. I did.

Q. I will ask you how you gained admission to the storeroom? A. Jerry Simpson let us in.

Q. Who let you in? A. Jerry Simpson.

Q. How did he let you in?

A. Got a key from Jake Saunders.

Q. How do you know that he got a key from Jake Saunders?

A. I accompanied him until he got the key.

Q. Who is Jake Saunders?

A. Jake Saunders is the man that works in there.

(Testimony of Lonnie McIntosh.)

Q. What was he doing, if you know, for Jerry Simpson? [85—74]

A. He was tending bar.

Q. What did he do with the key after he received it from Jake Saunders?

A. Came back to the storeroom and opened up the storeroom and let us in.

Q. What did you get there, if anything?

A. In the storeroom we found something like twenty sacks of beer.

Q. Did you, while you were searching for the beer under this wood-pile, did you notice anything else around there?

A. I noticed a trap-door, with some tackle to hoist something up from below.

Q. Did you open the trap-door? A. I did.

Q. Where did the trap-door lead to?

A. Down to the bay.

Q. Did you see Mr. Simpson, the defendant, while you were uncovering this wood-pile and making your search, procure anything from that part of the building that you were in?

A. No, I didn't see him take anything out.

Q. You didn't see him? A. No.

Mr. MALTBY.—That's all.

Cross-examination.

(By Judge WICKERSHAM.)

Q. What official position did you hold then, Mr. McIntosh? A. Chief of Police of Ketchikan.

Q. What time did you first go down there, that is under the first warrant?

(Testimony of Lonnie McIntosh.)

A. I believe it was around three or four o'clock. I couldn't say exactly the time. [86—75]

Q. Well, you think it was three o'clock or four o'clock?

A. I wouldn't say. It was either three or four—around that.

Q. Were you present when Mr. Handy testified that it was two o'clock in the former trial of this case, in the lower court?

A. I was. I wasn't in there at the time he testified. I believe he was testifying while I was outside.

Q. But you were here when he testified to-day that it was two o'clock? A. Yes, I was.

Q. Now, you think it was three or four o'clock? A. Yes.

Q. Were you with Mr. Handy all the time?

A. Not all the time.

Q. Whom did you go with mostly that evening, with Patrolman McDonald?

A. I was around with Mr. McDonald a while.

Q. More than you were with Mr. Handy?

A. Oh, about the same.

Q. About the same. So you think you went down there three or four o'clock. A. Yes.

Q. How long did you stay there?

A. Under the first search-warrant, we stayed there around one hour, I believe.

Q. About one hour. A. Yes.

Q. And then you think you went away?

A. I know we went away.

(Testimony of Lonnie McIntosh.)

Q. You know that? A. Yes, sir. [87—76]

Q. Who went with you?

A. Deputy Marshal Handy and Patrolman McDonald and myself.

Q. Where did you go?

A. Mr. McDonald and I, I believe, walked around town for a while, talking it over.

Q. When did you go back?

A. Well, we met Mr. Handy and Mr. Rutherford—

Q. Now, I asked you when you went back.

A. Well, it was about one hour later.

Q. One hour later. A. Yes.

Q. Who was there when you went back?

A. Who accompanied—

Q. Yes, who accompanied you?

A. Deputy Marshal Handy, Dave Rutherford and McDonald and myself.

Q. How long did you remain there that time?

A. Well, I remained there for about five or ten minutes, I believe.

Q. Where did you go then?

A. Mr. Handy and myself went out and looked around the place for a while.

Q. And then went back? A. Yes.

Q. Now, you say, Mr. McIntosh, that this wood was in the Dory? A. Yes, sir.

Q. Now, you want this jury to understand that you swear that that wood in the storeroom was in the Dory? A. That is what I call it.

Q. That is what you call it?

(Testimony of Lonnie McIntosh.)

A. Yes. [88—77]

Q. You think that is a fair statement to make to this jury, do you?

A. Well, that's all I know about it. It might be different, but that's all—

Q. (Interrupting.) You have been testifying all the time that that wood and that storeroom was in the Dory, haven't you? A. I believe I have.

Q. And you don't want to change it now?

A. No.

Q. Don't you know that it was under the roof of the Northern Building?

A. It was underneath the Northern, yes; but the Dory—

Q. (Interrupting.) But—

Mr. MALTBY.—(Interrupting.) Let him answer the question.

A. (Continuing.) But the Dory adjoins it. It's all the same.

Q. Yes, and the Revilla Hotel is a little farther up the street. A. I believe it is, yes.

Q. But you want to tell this jury now that all that wood was under the roof of the Northern Building, don't you?

A. It was underneath the roof of the Northern, yes.

Q. And the Northern and the Dory are separated from each other by a space of three feet, aren't they, except in places?

A. In some places they are separated, yes.

Q. And they are different buildings, aren't they?

(Testimony of Lonnie McIntosh.)

A. Well, I never noticed.

Q. You know the buildings, don't you?

A. Yes.

Q. Is the Northern Building the same as the Dory Building? A. I couldn't say.

Q. You couldn't say? A. No. [89—78]

Q. Don't you know that the Northern Building is two stories high? A. I think it is.

Q. And don't you know that the Dory is only one story high? A. Yes.

Q. And don't you know that this room where they had the wood is under the roof of the Northern?

A. It's underneath the roof of the Northern.

Q. Well, then, when you said it was under the roof of the Dory, you didn't mean that?

A. I didn't say that it was under the roof of the Dory.

Q. You didn't?

A. No; I said it was in the Dory, but not under the roof of the Dory.

Q. You still say it is in the Dory?

A. That's what I said.

Q. And you are going to stick to it. Is that right?

A. That was my opinion; yes; that's my opinion.

Q. But what is the fact?

A. It is underneath the roof of the Northern, but I always figured that it was the same place.

Q. Yes. I show you Plaintiff's Exhibit No. 2 and ask you to state to the jury what the large building

(Testimony of Lonnie McIntosh.)

is that is showing the flat side to you, if you know.

A. Yes; this is the Northern.

Q. The two-story building? A. Yes.

Q. Where is the Dory Building from that?

A. Can't see it from here.

Q. Can't see it. Now, I show you another photograph, which I intend, may it please the Court, to ask to have marked for [90—79] identification. Now, I show you this photograph, showing the front of those two buildings. What buildings are those?

A. Well, there is the Dory and the Northern there (pointing).

Q. Now, which building was the wood in?

A. It was underneath the Northern.

Q. Yes. I offer this photograph, may it please the Court, in evidence or for identification.

The COURT.—Give it the next number. I think it is—.

(Whereupon photograph offered was received in evidence and marked Defendant's Exhibit No. 3.)

Q. Now, you went with Jerry to get the key from Jake Saunders? A. I did.

Q. Where did you find Jake?

A. Jake, oh, I believe he was around the stove, somewheres near the bar.

Q. What building was he in?

A. He was in the Dory.

Q. He was in the Dory and Jake had the key?

A. Jake had the key; yes.

Q. Do you know whether Jake has a room at the

(Testimony of Lonnie McIntosh.)

rear end of the Northern or not? A. Yes, he has.

Q. Were you in that room that night?

A. I was in the room that afternoon.

Q. That afternoon. Did you find any beer there?

A. No, sir.

Mr. MALTBY.—I object to that, if the Court please.

Q. State what Jake said when he was asked for the key? A. I never heard him say anything.

Q. Just tell us what happened when you went out with Jerry to get that key to the storeroom?

A. Jake found the key and Jake gave it to him.

[91—80]

Q. Yes. A. And then we went back again.

Q. Jerry unlocked the door?

A. Jerry unlocked the door.

Q. Now you and Mr. McDonald made a search in this wood for beer? A. We did.

Q. While you were doing that, Jerry called your attention to the fact that you weren't doing it as he thought it should be done, or something of that kind was said, wasn't there?

A. Jerry said, "You've got me anyway, so I'll show you an easier way," and he pulled out some slabs.

Q. Those slabs were right in front of your nose?

A. Yes.

Q. And you were at work on it yourself?

A. Well, farther back. We are getting down that way.

Q. Was there a table there under the wood?

(Testimony of Lonnie McIntosh.)

A. There was, yes.

Q. Whereabouts was this wood that he pulled out with reference to that?

A. Right underneath the table.

Q. Right underneath the table. And there were some sacks in there? A. Three or four.

Q. Did you have any conversation with Jerry about what was in there before you looked in?

A. No, I don't believe I had any conversation.

Q. Didn't Jerry laugh at you and offer to bet you that there wasn't anything in there?

A. Yes, I think Jerry did make some kind of remark like that.

Q. To whom did he make that remark?

A. To the bunch in general, I suppose—all of us.
[92—81]

Q. Offered to bet you that there wasn't anything there?

A. Yes, I believe he did—something like that.

Q. And when you got into that, I believe you found one sack? A. No; about three sacks.

Q. Now, think that over carefully?

A. Three sacks of beer.

Q. You are sure of that?

A. I'm positive that there was three.

Q. Wasn't there only one sack with a few bottles in it? A. No; I'm pretty sure there was three.

Q. You are sure about that? A. Yes, sir.

Q. What else was in there?

A. There was some straw in there that covered whiskey bottles.

(Testimony of Lonnie McIntosh.)

Q. What else? A. That's all I remember.

Q. Were there any bottles of beer in bottles standing up on the north wall of that room?

A. There was some near beer; yes.

Q. Some near beer? A. Yes.

Q. You saw that? A. I seen that; yes.

Q. What else was in that room?

A. There was a trap door there?

Q Yes. You told the jury that two or three times now.

The COURT—Well, you asked him.

Judge WICKERSHAM.—That it was in the room?

The COURT.—Oh, yes.

Judge WICKERSHAM.—Well, the witness knows what I am trying to get at. I want him to testify what else was in the room in the way of personal property. [93—82]

The COURT.—Besides what he has testified to?

Judge WICKERSHAM.—Yes; besides what he has testified to.

WITNESS.—Well, there was a couple of trunks, and I think I seen some part of a billiard-table, and some other stuff.

Q. The room was full of plunder of all kinds?

A. There was a lot of different things in there.

Q. It was an old storeroom? A. Yes.

Q. Weren't there three billiard-tables knocked down? A. I didn't notice..

Q. There was no billiard-table set up? A. No.

Q. It didn't look as though the room was occu-

(Testimony of Lonnie McIntosh.)

pied for any purpose except storage and whatever was in there?

A. It looked like that is what it was for; yes.

Q. There was a lot of wood in there and coal and all this paraphernalia that you have talked about?

A. Yes; different paraphernalia.

Q. Now, did you see any beer in any other room except that one? A. Yes, I did.

Q. Where else did you see the beer?

A. Well, I didn't find the beer in the other room. I just remember that what was found was right back of the door leading out to another room from this storeroom.

Q. I show you a plat. This plat represents— This is Front Street and this represents Mill Street. This (indicating) represents the Dory here.

A. Yes.

Q. Will you examine that and point out where this wood and storeroom was, this being the alley back here (indicating). The other witness turned that around so as to get it in the [94—83] right direction. Now this (indicating) is Mill Street and here is Front Street and here is the alley back here.

A. This (indicating) is the entrance to the Dory.

Q. That is the entrance to the Dory.

A. Here (indicating) is the storeroom there.

Q. Mark that storeroom with an E, won't you, or an F? Mark it with an F.

(Witness does so.)

Q. Is that the place you found part of the beer?

(Testimony of Lonnie McIntosh.)

A. Yes.

Q. That one room? A. Yes.

Q. Now, were there— Where else did you find beer?

A. I didn't find it. I don't know where they found it.

Q. Where did you see it?

A. I seen it in one of these places here (indicating).

Q. Mark that G.

(Witness does so.)

Q. How much of the beer, or how many sacks of beer did you find back in this place that you have marked G?

A. Oh, I suppose twenty-five or thirty sacks.

Q. Twenty-five or thirty sacks? A. Yes.

Q. How many did you find in this larger storeroom? A. We found about twenty sacks.

The COURT.—Speak louder.

The WITNESS.—We found about twenty sacks.

Q. You found about twenty sacks in that large storeroom? A. Yes.

Q. And twenty-five or thirty back in this cabin?

A. Yes. [95—84]

Q. You know, don't you, that this cabin at the rear of the Northern Building, where you found this twenty-five or thirty sacks, is separated from the Northern Building?

A. Yes, sir; it is separated by a little space. Doors join it.

Q. You carried this beer out through that cabin

(Testimony of Lonnie McIntosh.)

with the other beer on to the street? A. Yes, sir.

Q. Who did you go down there with, in the first place, under the first warrant?

A. Marshal Handy and McDonald.

Q. Deputy Marshal Handy? A. Yes, sir.

Q. And went with him the second time?

A. Yes, sir.

Q. He asked you to go? A. Yes.

Q. He did? A. Yes.

Q. Do you know whether Mr. McDonald and you both went at his request?

A. We both went at his request.

Q. And you acted under his instructions all the time? A. Yes, sir.

Q. Now, at the time you say that Jerry said, "Well, you got me anyway," and showed you this wood, how to handle the wood, had you found anything up to that time?

Mr. MALTBY.—You mean, if Mr. McIntosh found any?

Judge WICKERSHAM.—I mean any of them.

Mr. MALTBY.—If you know.

A. I can't say as to that. I wouldn't say one way or the other.

Q. Now, isn't it a fact that you had not found anything? [96—85]

A. Well, I wouldn't swear either way. I don't remember.

Q. Now, you mentioned also that there was a trap-door at the rear end of the Dory. Where is that trap-door?

(Testimony of Lonnie McIntosh.)

A. Well, there is a partition and it is right in back of this partition and another little room.

Q. Point it out on this map?

A. There it is (pointing) right in there.

Q. It isn't marked. Make a letter H about where you think it is. A. Where the trap-door is?

Q. Yes.

A. Well, the trap-door I figure was right in the corner around here (showing).

Q. About there, you think? A. Yes.

Judge WICKERSHAM.—That's all.

Redirect Examination.

(By Mr. MALTBY.)

Q. Mr. McDonald, or Mr. McIntosh, how do you get to what is known as the Dory, or from what is known as the Dory back into where this beer was found under the wood-pile?

A. Well, there is a door leading right back there.

Q. Please explain to the Court and jury how, after you enter the front door of the Dory—just please give them an idea of the geography of the place there, will you?

A. Well, after you enter the front end of the Dory, you walk back and it's on the right-hand side, a little past the lunch counter. There is a door there and leads you right into it.

Q. And it is back in through there where you found this beer? A. Yes, sir.

Q. Now, after you started to search under the second search-warrant, did you see Jerry Simpson and Jake Saunders coming [97—86] from the

(Testimony of Lonnie McIntosh.)

direction where you uncovered the beer, under that wood-pile.

Judge WICKERSHAM.—Now, I object to that as leading and suggestive.

Mr. ZIEGLER.—And not redirect examination, either.

The COURT.—Objection overruled, as being leading and suggestive, because he can ask him—simply a preliminary question, I suppose.

Mr. MALTBY.—Well, I should have directed his attention to the fact that it was before the second search-warrant was issued and while he was in the Dory, if he saw the defendant Jerry Simpson and Jake Saunders in or around the place there.

A. I was standing outside of the Dory.

Judge WICKERSHAM.—I object. He can answer that yes or no.

Q. And did you see him, or them? A. No.

Q. Did you see them at all?

A. I seen them in the Dory. I don't quite understand what you mean.

Q. Well, before the second search-warrant was issued and before you started your search under the second search-warrant, did you at any time see Jake Saunders and Jerry Simpson inside of the premises? A. I seen them in the Dory; yes.

Q. Where were you when you saw them?

A. I was in the Dory.

Q. You were in the Dory. What were they doing, if anything?

A. Nothing that I know of—just around there.

(Testimony of Lonnie McIntosh.)

Q. What part of the Dory were they in?

A. In the front part.

Q. Now, while you were— Before the second search-warrant was [98—87] issued and while you were in the vicinity of the Dory there, did you see Jake Saunders and Jerry Simpson coming from anywhere—

Judge WICKERSHAM.—Now, I object to that as leading and suggestive.

Mr. MALTBY.—That is not leading or suggestive.

Judge WICKERSHAM.—“Coming from”?

The COURT.—“Anywhere”? He may answer.

Judge WICKERSHAM.—Object. Exception.

A. Yes.

Q. From where?

A. Coming from the storeroom.

Q. Coming to where?

A. Just outside in the little alleyway. They stopped there. I got out of there before they seen me.

Mr. MALTBY.—That’s all.

Recross-examination.

(By Judge WICKERSHAM.)

Q. What were you doing in the alleyway?

A. I wasn’t in the alleyway.

Q. Where were they?

A. I said they were—they come out of the storeroom into that little alleyway.

Q. Could you see from the Dory?

(Testimony of Lonnie McIntosh.)

A. I could look right through from the Japanese noodle joint.

Q. You were in there?

A. No; I wasn't in there. I was outside.

Q. You were outside on the street?

A. Outside on the street, looking in.

Q. You were looking in and you could see them come out there into the alleyway? [99—88]

A. Yes.

Q. And you still watched the premises around there? A. Yes; Mr. Handy and I both.

Q. Under his instructions. That was before the second warrant came? A. Yes.

Q. And at that time you had other men stationed inside, didn't you? A. I didn't; no.

Q. Mr. Handy did, didn't he?

Mr. MALTBY.—If he knows.

Q. If you know.

A. McDonald and Rutherford, they were in there.

Q. McDonald and Rutherford were in there, acting under the deputy marshal's instructions?

A. I know they were in there.

Q. That's after they abandoned the first warrant and after the second warrant came back?

A. Yes; they were in there.

Judge WICKERSHAM.—That's all.

(Witness excused.)

Testimony of Harold A. Snyder, for Plaintiff.

HAROLD A. SNYDER, called as a witness on behalf of the plaintiff herein, having been first duly sworn, was examined and testified as follows:

Direct Examination.

(By Mr. STABLER.)

Q. Just state your name?

A. Harold A. Snyder.

Q. Where do you live? A. Ketchikan.

Q. Have you made any study of chemical analyses, Mr. Snyder? A. I have. [100—89]

Q. Have you had any experience outside of your studies in chemical analyses? A. I have.

Q. From such study and experience, can you determine, by analysis, the alcoholic content, or the want of alcoholic content, of any liquor?

A. Yes, sir.

Q. In beer and other fermented liquors, as well as spirituous liquors? A. Yes, sir.

Q. Let me ask you if you recognize this bottle and the contents (exhibiting bottle).

Judge WICKERSHAM.—I want to make the objection, may it please the Court, to those questions.

A. (Examining bottle.) Yes, sir; I recognize it.

Q. What is it? Where did you get it?

A. I got it from Mr. Handy.

Q. What is in it? A. Beer.

Q. Did you make any chemical analysis of the contents or any part of the contents of this beer?

(Testimony of Harold A. Snyder.)

A. I did.

Q. When?

Judge WICKERSHAM.—I object, may it please the Court. It is immaterial, irrelevant and incompetent. It isn't shown to have been found on the place under either of these search-warrants.

The COURT.—He may answer.

Judge WICKERSHAM.—Exception.

Q. When? A. The twenty-first.

Q. You say you did make a correct analysis of the contents or part of the contents of this bottle?
[101—90]

A. Yes, sir.

Q. State the result of your examination as to the alcoholic content, if any.

Judge WICKERSHAM.—I renew my objection generally.

The COURT.—The same ruling.

Judge WICKERSHAM.—Exception.

The COURT.—The same exception allowed.

Q. All right, now, please state the result of your examination as to the alcoholic content, if any?

A. I found it to be 5.2 per cent alcoholic contents by volume.

Q. 5.2 alcohol by volume? A. Yes, sir.

Q. I will offer this, if the Court please, in evidence.

Judge WICKERSHAM.—We object to it for the reasons heretofore stated.

The COURT.—It may be received in evidence.

(Testimony of Harold A. Snyder.)

(Whereupon bottles of beer were received in evidence and marked plaintiff's exhibits.)

Judge WICKERSHAM.—Note an exception.

Q. I will ask you if you recognize this bottle (handing bottle to witness).

A. Yes, sir.

Q. What is in that bottle? A. Beer.

Judge WICKERSHAM.—We make the same general objection.

The COURT.—Oh, yes; you may take your objection to all this class of testimony. The same ruling.

Q. Where did you get the bottle and contents?

A. From Mr. Fred E. Handy.

Q. Have you made any chemical analysis of the contents or any part of the contents of this bottle?

A. Yes, sir. [102—91]

Q. You stated, I believe, that it was beer?

A. Yes.

Q. What would you say the alcoholic content was, if any? A. 5.25 per cent.

Q. What? A. Alcoholic content by volume.

Mr. STABLER.—If the Court please, I will offer this as exhibit No. 2.

The COURT.—It may be received, subject to the objection.

Judge WICKERSHAM.—We renew our objection.

The COURT.—The same ruling. Exception allowed.

(Testimony of Harold A. Snyder.)

Q. From your experience, could you state that that was intoxicating? A. Yes.

Mr. STABLER.—That's all.

(Whereupon said bottle of beer was received and marked Plaintiff's Exhibit No. 2.)

Plaintiff rests. [103—92]

Testimony of F. E. Handy, for Plaintiff (Recalled).

F. E. HANDY, having been recalled as a witness on behalf of the plaintiff, and having previously been sworn, was examined and testified as follows:

Direct Examination.

(By Mr. STABLER.)

Q. Your name is Handy, Fred Handy?

A. Yes, sir.

Q. Deputy United States marshal?

A. Yes, sir.

Q. Now, Mr. Handy, on January seventh, when you made this raid at Jerry's place, called the Dory, I want to ask you how many different brands of beer you discovered on those premises?

A. Two.

Q. What were those brands?

A. Britannia and Export. [113—102]

Q. Now, how many sacks, approximately of the Britannia beer did you discover?

A. Three and a half sacks, besides those sixty bottles in evidence.

Q. And approximately how many sacks of the Export Lager?

(Testimony of F. E. Handy.)

A. There must have been over fifty—fifty-four, fifty-three or fifty-four, something like that. I think there's supposed to be fifty-seven original sacks.

Q. How many sacks did you take from this one room; that is the storeroom connected with the Dory?

A. About thirty, or over thirty sacks; about that.

Q. Now, did you take, or was that taken from the place known as the storeroom; that is, where the wood was stored?

A. Yes, sir.

Q. Now, this beer here, Lager and Britannia, that is a sample of the Britannia beer that you took from the premises?

Judge WICKERSHAM.—I object to counsel's leading the witness.

The COURT.—Well, don't lead your witness.

Q. I will ask you if that is a sample of any kind of beer taken from those premises.

A. This (examining) is a sample of one kind—the Britannia beer.

Q. What is this bottle here (handing bottle to witness).

A. That is a sample of the other kind—the two kinds.

Q. Did you find any other kind of beer on these premises?

A. No, sir.

Q. Any place?

A. No, sir.

Q. Do you know where that beer is made?

A. One brand, I think, is made in Victoria and the other in New Westminster. I wouldn't be posi-

(Testimony of F. E. Handy.)

tive. I think that's the way the label reads.
[114—103]

Q. You know that from the labels on the bottles?

A. Yes, sir.

Judge WICKERSHAM.—Well, then I move to strike out his testimony, because it's hearsay and not from his own knowledge.

The COURT.—Yes, it may be stricken.

Judge WICKERSHAM.—I'll ask the Court to instruct the jury not to pay any attention to that testimony.

Mr. MALTBY.—That is, as to where the beer was made?

Judge WICKERSHAM.—Yes.

The COURT.—The jury will not pay any attention to Mr. Handy's testimony in reference to where the beer was made, because he states from the labels on the bottles themselves.

Mr. MALTBY.—That's all.

Cross-examination.

(By Judge WICKERSHAM.)

Q. Now, Mr. Handy, you think there were about thirty sacks found in that big storeroom?

A. There were about thirty.

Q. How many sacks did you find back in Wiley's room? A. Where?

Mr. STABLER.—Now, if the Court please, this witness has not testified that he found any in Wiley's room.

Judge WICKERSHAM.—I'm asking if he did find some back there.

(Testimony of F. E. Handy.)

The COURT.—Back where?

Judge WICKERSHAM.—Back there in Wiley's room.

The COURT.—There is no testimony as to any Wiley room.

Judge WICKERSHAM.—The Wiley cabin?

The COURT.—Nobody testified as to Wiley's cabin; no testimony by the prosecution as to any Wiley cabin. [115—104]

Judge WICKERSHAM.—If the Court will permit me to have the map—

The COURT.—Yes. (Hands map to Mr. Wickersham.)

Q. I call your attention to the cabin on the back part of the lot behind the Northern Hotel, where you marked C yesterday and to the back corner where you made a mark, and ask you how many sacks of beer you found in there, this (indicating) being Mill Street here, this Front Street and that the alley back there?

A. Twenty sacks in the corner of this room.

Q. Were they the same brands of beer that you found in this other room?

A. I couldn't say as to that. They were in sacks.

Q. They were all in sacks?

A. All the beer was in sacks, and I took it up to the courthouse.

Q. What did you do with it when you got to the courthouse?

A. I put it in the courthouse here and took them

(Testimony of F. E. Handy.)

out the next morning and counted them—put them all out on the floor.

Q. How many did you have?

A. Over twelve hundred, about 1,250, as near as I could tell with the broken ones.

Q. Now, where did these two bottles (indicating) come from?

A. They come out of that bunch of beer that was brought up.

Q. The 1,250 bottles? A. Yes, sir.

Q. You are sure about that?

A. Yes, I am sure about that.

Q. How sure are you about that, that they came out of the 1,250 bottles?

Mr. STABLER.—Now, if the Court please, I object to that. [116—105] He's arguing with the witness.

The COURT.—He states he is sure about it; that's enough.

Q. Were they in your possession? A. Yes.

Q. How frequently did you see them?

A. I had them under lock and key all the time.

Q. Well, then, did those two bottles come out of the back room or the woodroom?

A. They come out of the— I don't know which room those bottles come out of. They come out of the original 1,250 bottles.

Q. But you don't know whether they came out of the cabin at the back end of the Northern or the woodroom, do you? A. That I couldn't say.

(Testimony of F. E. Handy.)

Judge WICKERSHAM.—That's all.

Redirect Examination.

(By Mr. STABLER.)

Q. Let me ask you if you found either one or the other of those kinds of bottles, or of beer, rather, in this storeroom; that is, in the woodroom? Could there have been any other kind?

Judge WICKERSHAM.—Now, I object to counsel's testifying. Counsel shouldn't do that.

The COURT.—Yes.

Q. Can you say what kind of beer you found in the storeroom, that is the woodroom?

A. Export Lager.

Judge WICKERSHAM.—And you found the same kind in the other room?

A. I couldn't say as to that because— [117—106]

Judge WICKERSHAM.—Is there any other kind in the 1,200 or twelve hundred and fifty bottles except Britannia and Export? A. No, sir.

Judge WICKERSHAM.—That's all.

Mr. STABLER.—That's all.

Plaintiff rests. [118—107]

Whereupon argument was had by respective counsel, after which the following instructions were delivered to the jury:

Instructions of the Court to the Jury.

Gentlemen of the Jury:

This action was initiated in the Commissioner's

Court of the Ketchikan Precinct, on January ninth last, with the filing, by Deputy Marshal Handy, of a criminal information against J. B. Simpson and Jerry Simpson, charging them with having, on January 7, 1922, in their possession, or under their control, intoxicating liquor at Ketchikan, in the Territory of Alaska. At the outset of the trial in the Commissioner's Court, separate trials were demanded by the defendants and each in that court were separately tried. Each separately appealed to this court from the judgment of conviction before the Commissioner, and this case before us now is on appeal of the defendant Jerry Simpson from judgment and sentence of the lower court, and the case is now about to be finally submitted to you on the question of the guilt or innocence of the defendant Jerry Simpson, solely upon the evidence produced before you and the law, as I am about to instruct you on.

I instruct you that the fact that the defendant was convicted in the lower court of the charge on which he is now being tried before you, should not be taken or considered by you in any manner or way as a presumption that he is guilty of the crime charged. When a person charged with a crime has regularly appealed from the Commissioner's Court to this court, under our law he is entitled to trial by this Court and a jury anew. That is to say, he comes before the court and jury with [165—154] exactly the same presumption of innocence that surrounds him when he comes before the court for trial on an accusation initiated in this court. You are,

therefore, not to suffer or permit the result of the trial in the lower court to influence you in arriving at your verdict. In this case, therefore, as in all other criminal cases, the defendant comes before you with the presumption that he is innocent of the crime of which he is accused and this presumption abides with him throughout the trial until the evidence produced before you shall have convinced you, beyond a reasonable doubt, that he is guilty of the offense charged.

The law, of the violation of which the defendant is accused, is what is commonly called the "Alaska Bone Dry Law" and makes it a misdemeanor for any person, house, association, firm, company, club or corporation, his, its or their agents, officers, clerks, servants, to have in his or its possession, any intoxicating liquor in the Territory of Alaska; and further provides that the term "intoxicating liquor" whenever used in the act, shall be deemed to include whiskey, brandy, rum, gin, wine, porter, beer, cordials, hard or fermented cider, alcoholic bitters and malt liquors, including alcoholic compounds classed by the Internal Revenue Service of the United States as compound liquors. It is further provided in the act, that it shall not be necessary, in a warrant, information, or indictment, to specify the particular kind of alcoholic liquor which is made the subject of the accusation, for a violation of the act. So that, as in the complaint in this case, it is charged that the defendant had in his possession alcoholic liquors, such charge covers all descriptions

of liquor above set forth as deemed included in the term "alcoholic liquors." [166—155]

The information in this case charges the defendant with having had in his possession intoxicating liquor, without designating the particular kind of liquor. Under the statute, however, beer is classed as intoxicating liquor, the possession of which is denounced by the statute, and to that class of liquor the whole evidence of the prosecution is directed.

If, therefore, you should find from the evidence, beyond a reasonable doubt, that the defendant, on the seventh day of January, 1922, at Ketchikan, in the Territory of Alaska, had beer in his possession or under his control, then it would be your duty to find him guilty as charged. If, however, you should, from the evidence or lack of evidence, have a reasonable doubt as to his having had in his possession or under his control, at the time and place stated, beer, then it would be your duty to acquit.

The statute condemns possession or control of the classes of liquor mentioned therein. Now, possession, as contemplated by the statute, does not mean actual, physical, manual possession or control, but it means dominion and control over the property denounced by the statute. A person may have possession and control over a chattel through others, as, for instance, his servants, agents or employees. So it is not necessary that it should be proved by the prosecution that the defendant had actual manual possession or control of the property denounced under the statute. However, the possession or control denounced by the statute must

be a conscious possession or control; that is to say, a control with knowledge; that is, knowledge in the defendant that he had control or possession of the property denounced by the statute. Therefore, the possession required by the statute to be a crime must be a conscious dominion and control over the property, either [167—156] personally or through the agency of others.

If, therefore, from the evidence or lack of evidence, you have a reasonable doubt as to whether the defendant knew that the beer alleged by the prosecution to have been found in the Dory, if you should find beer was found therein, was therein and under his dominion and control, then it would be your duty to acquit.

It appears from the testimony that a large number of bottles testified to by the Government's witnesses were found under a search-warrant issued for the search of the Dory soft drink establishment and the lower floor of the Northern Hotel. The Government contends that the place where the beer was found was a part of the Dory establishment and the defendant contends that it was not. This is an issue raised in this case as bearing on the question whether or not the defendant knowingly had possession or control of the beer found, provided you should find it to be beer, by the officers in pursuance of the search-warrant issued by the Commissioner. There has been evidence submitted on this point, showing the relative situation of the places where the alleged beer was found by the officers as to the main building of the Dory and the Northern

and the rooms therein; also what was said and done at the time of the search and other facts and circumstances. This was admitted in evidence as throwing light on the question of the conscious possession and control of the beer alleged by the Government to have been found, and from that and the other evidence in the case, it devolves upon you, the jury, to determine whether or not the defendant is guilty or not guilty of the crime charged; that is, having possession of intoxicating liquor.

As I have heretofore stated to you, in this as in all criminal cases, you must be satisfied, beyond a reasonable [168—157] doubt, before you can find the defendant guilty of the crime charged. A reasonable doubt is one based on reason and which is reasonable in view of all the evidence in the case. If after an impartial comparison and consideration of all the evidence, or from want of evidence on behalf of the Government to convince you of the truth of the charge, you can candidly say that you are not satisfied of defendant's guilt, you have a reasonable doubt. But if, after an impartial comparison and consideration of all the evidence, you can truthfully say that you have an abiding conviction of defendant's guilt, such as you would be willing to act upon in all the more weighty and important matters relating to your own affairs, you have no reasonable doubt.

Some testimony has been introduced on the part of the prosecution relating to certain statements or admissions made by the defendant, at or during the time of the search by the Government's officers

under the search-warrant. I charge you that oral admissions or statements of a defendant are to be received with caution and viewed with scrutiny and that in considering such testimony, you should take into consideration the surrounding circumstances and surroundings of the defendant, and the probability or improbability of his having made such statements, not because witnesses wilfully misstate alleged admissions or statements they may have heard, but because it is a well-known fact that it is easy to be mistaken as to the words or expression used by a third person which we undertake to repeat a long time afterward.

Some comment has been made by the counsel for the defendant as to whether the affidavit for the search-warrant in this case was sworn to before the search-warrant was issued. That is not direct testimony in this case. It is a matter [169—158] for the Judge of the court to determine whether the search-warrant was properly issued. Every officer is presumed to do his duty according to law, and the burden is not on the Government at any time to prove that the officer did his duty. The burden or presumption being that he did do his duty, the burden is on the other side to show that he did not so do it.

You, Gentlemen, are the sole judges of the weight of the evidence and the credibility of the witnesses in the case. Yet your power of judging of the weight of evidence submitted is not arbitrary, but is to be exercised with legal discretion, in subordination to the rules of evidence. You are not bound to find

in conformity with the declarations of any number of witnesses which do not produce conviction in your minds, against a less number or against a presumption or other evidence satisfying your minds. A witness wilfully false in one part of his testimony may be distrusted in other parts.

In judging of the weight to be given to testimony of the witnesses in the case and their credibility, you may take into consideration the character of the witness, his demeanor on the stand, his interest, if any, in the result of the trial, his relation thereto, the intelligence or want thereof of the witness, the opportunity or lack of opportunity for knowing the facts concerning which he may testify, the probability or improbability of his story, his apparent candor and fairness, or want thereof, and when witnesses directly contradict each other, you should consider all the evidence in the case and after such consideration, determine which witnesses are most worthy of credit and give credit accordingly.

In this connection, I deem it my duty to call your attention to the fact that in the consideration of this case, as in all other cases coming before the court for trial, it is your duty as jurors as well as my duty as judge, not to permit [170—159] our private opinions or prejudices to sway us from our duty to try the case and render our judgment upon all the evidence before us and the law. Neither you nor I have anything to do with the expediency or policy of the Alaska Bone Dry law or any other law enacted by the proper authority. Your opinion and my private opinion may be

against the expediency or policy of the law; yet when that law is enacted by constituted authority, it is our duty to abide by and obey it, and when placed in the position of Judge and jury, charged with the enforcement thereof, to enforce it. By this, it is not meant that we should go beyond our duty in its enforcement, but if the evidence has convinced you, as the jury, beyond a reasonable doubt, that the defendant has violated the law, it is your duty to find him guilty, regardless of what your private opinion may be as to the expediency or policy of the law. Should you, however, by reason of the evidence or lack of evidence, have a reasonable doubt as to whether the defendant has violated the law in the manner and at the time set forth in the accusation, you should find him not guilty. You should consider the question of the guilt or innocence of the defendant solely upon the evidence and make your decision upon that only. You should not let bias, prejudice, sympathy or friendship divert your minds from the evidence or sway your judgment in the consideration thereof, but calmly and dispassionately consider the whole evidence with the law as given you by the Court and render your verdict upon that only.

I hand you two forms of verdict—one finding the defendant guilty as charged; the other finding him not guilty. When you retire to your jury-room, you will elect one of your number foreman, and after careful and impartial consideration of all the testimony, having agreed upon a verdict, you will sign a corresponding verdict, through your

foreman, and return the same into open court.
[171—160]

In the District Court of the United States for the
Territory of Alaska, Division Number One.

No. 757—KB.

THE UNITED STATES OF AMERICA

vs.

JERRY SIMPSON.

Verdict

Special May Term, 1922.

We, the Jury, empaneled and sworn in the above-entitled cause, find the defendant guilty as charged in the indictment.

Dated at Ketchikan, Alaska, this 24th day of May, 1922.

D. W. SANFORD,

Foreman.

Filed in the District Court, District of Alaska, First Division. May 25, 1922. John H. Dunn, Clerk. By W. B. King, Deputy.

Entered Court Journal No. 5, page 44.

We, the jurors, duly impaneled and sworn to try the case of United States (Plaintiff), vs. Jerry Simpson (Defendant), respectfully [172—161] request the leniency of the Court in the above-entitled action.

D. W. SANFORD,

Foreman.

(Also signed by each juror.)

In the District Court for the Territory of Alaska,
Division No. One, at Ketchikan.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

JERRY SIMPSON,
Defendant.

Judgment and Sentence.

This matter coming on to be heard for imposition of sentence upon the above-named defendant, Jerry Simpson, upon a verdict of guilty of the crime of possessing intoxicating liquors in violation of Section 1 of the Alaska Bone Dry Law, being an act of Congress to prohibit the manufacture or sale of intoxicating liquors in the Territory of Alaska, approved February 14, 1917, such verdict having been heretofore, to wit, on the 24th day of May, 1922, rendered and filed by a jury duly impaneled and sworn to try this cause on appeal from the United States Commissioner's Court for the Precinct of Ketchikan, Territory of Alaska, Division Number One, at Ketchikan, Alaska, wherein on the 17th day of January, 1922, said defendant was by a jury fully selected and empaneled, found guilty of the crime of possessing intoxicating liquor in violation of Section 1 of said Alaska Bone Dry Law. The defendant is present in court and represented by A. H. Ziegler and James Wickersham, his attorneys; Arthur G. Shoup, United States Attorney, being present on behalf of the Government. The Court,

asking said defendant if he has any good and sufficient reason why sentence should not now be imposed, to which he offers no good or sufficient reason; and the Court being fully advised in the premises, [173—162] does say:

That it is the judgment of the Court that said defendant, Jerry Simpson, is guilty of the crime of possessing intoxicating liquors in violation of section 1 of said Alaska Bone Dry Law, and it is the sentence of the Court that the defendant Jerry Simpson pay a fine of \$700 and be confined in the federal jail at Juneau, Alaska, for four months, and that he be imprisoned in addition to such jail sentence, until such fine is paid, not exceeding three hundred and fifty days.

Done in open court this fifth day of June, 1922.

THOMAS M. REED.

Judge.

Filed in the District Court, District of Alaska, First Division. June 5, 1922. J. H. Dunn, Clerk.

Entered Court Journal No. 5, page 63.

In the District Court for the Territory of Alaska,
Division Number One, at Ketchikan.

No. 757—KB.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JERRY SIMPSON,

Defendant.

Motion for New Trial.

Comes now Jerry Simpson, the above-named defendant and moves this Court to set aside the verdict of the jury in the above-entitled cause, which verdict was rendered by said jury and filed in the cause on May 25, 1922, upon which verdict the defendant was found guilty of violation of an act commonly known as the Alaska Bone Dry Law, prohibiting the possession of intoxicating [174—163] liquors in the Territory of Alaska, and to grant to the defendant a new trial upon the following grounds and for the following reasons, to wit:

1. Irregularity in the proceedings of the Court, jury and adverse party, and abuse of discretion by the Court, by which said party was prevented from having a fair trial, and in particular by the refusal of the Court to dismiss the said cause and instruct the jury to return a verdict for the defendant upon the close of the case, as presented by the prosecution, upon the ground that there was not any testimony offered before the jury at that time that the defendant was guilty of having intoxicating liquor in his possession or under his control at the time mentioned in the complaint and in the evidence and relation thereto.

2. Misconduct of the prevailing party in that the United States District Attorney, when questioning J. B. Simpson, an important witness for the defendant, asked said witness if he had not been convicted of a felony, which question was asked by said United States Attorney with a view of prejudicing the jury

against the said witness, and was asked by said prosecuting attorney who knew at said time that said question was improper and not authorized by the laws of Alaska, governing the impeachment of a witness.

3. Insufficiency of the evidence to justify the verdict in this case.

4. Error in law occurring at the trial and in connection with the preliminary matters relating to the trial, excepted to by the defendant in this:

(a) That the Court erred in overruling the demurrer to the complaint filed by the defendant.

(b) That the Court erred in overruling the motion of the [175—164] defendant to suppress the evidence in this case, on the ground that the same was obtained under a search-warrant, which said search-warrant and the affidavit upon which it is based were and are void and illegal, and not in accordance with the Fourth Amendment of the Constitution of the United States, and in violation of the defendant's rights thereunder; and because said affidavit and search-warrant do not state facts sufficient to create a probable cause or to authorize the issuance of the search-warrant, and the search conducted thereunder was in violation of law and an unreasonable and unlawful search.

(c) That there was no evidence presented in the case that any search-warrant was legally issued by any competent court or person whatsoever, because said search-warrant and the affidavit upon which same was based were not introduced in evidence in the trial of said cause.

(d) That the Court erred in instructing the jury that the search-warrant and affidavit upon which it was based were presumed to be legal, and that the officers who issued the same are presumed to have done their duty with reference thereto, and that the burden is on the defendant to prove that said affidavit and said search-warrant were irregular and void, to all of which errors above mentioned the above defendant duly excepted.

(e) And for the further errors committed by the Court in the ruling on objections and motions, as appears by the Court stenographer's transcript, and to which reference is made for a more accurate description.

WHEREFORE, defendant prays that the Court set aside the verdict heretofore rendered in this cause, and grant the defendant a new trial.

Dated at Ketchikan, Alaska, this 26th day of May, 1922. [176—165]

JAMES WICKERSHAM and
A. H. ZIEGLER,

Attorneys for Defendant.

Copy rec'd and service admitted this 26th day of May, 1922.

ALFRED E. MALTBY,
Asst. U. S. Attorney.

Filed in the District Court, District of Alaska,
First Division. May 26, 1922. ———, Clerk.
By ———, Deputy.

—which motion was, on Monday, June 5, 1922, overruled and exception allowed.

(Same Caption and Title.)

Petition for Writ of Error.

To the Honorable THOS. M. REED, Judge of the
Above-entitled Court;

The above-named defendant, Jerry Simpson, feeling himself aggrieved by the verdict of the jury rendered herein on May 24, 1922, and the judgment and sentence thereon rendered in this Court on June 5, 1922, whereby the defendant, Jerry Simpson was adjudged guilty of the crime of possessing intoxicating liquors in violation of Section 1 of the Alaska Bone Dry Law, being an act of Congress to prohibit the manufacture or sale of intoxicating liquors in the Territory of Alaska, approved February 17, 1917, and sentenced this fifth day of June, 1922, by the judge of this Court to pay a fine of \$700 and be confined in the federal jail at Juneau, Alaska, for four months, and that he be imprisoned in addition to such jail sentence until such fine is paid, not exceeding 350 days.

Comes now the defendant and petitions this Honorable [177—166] Court for a writ of error allowing said defendant, Jerry Simpson, to prosecute a writ of error in and to the United States Circuit Court of Appeals, for the Ninth Circuit, under and according to the law in such cases made and provided; also, that an order be made staying the proceedings and execution in such case until a **further** order of the United States Circuit Court of Appeals

and pending the prosecution of said writ of error.

JERRY SIMPSON,

WICKERSHAM & ZIEGLER,

Attorneys for Defendant.

Due service of a copy of the foregoing petition for writ of error is admitted this fifth day of June, 1922.

A. G. SHOUP,

United States District Attorney.

Filed in the District Court, District of Alaska,
First Division. June 5, 1922. J. H. Dunn, Clerk.

(Same Caption and Title.)

**Order Allowing Writ of Error and Fixing Superse-
deas Bond.**

This cause coming on to be heard in open court on this fifth day of June, 1922, and the Court having examined the petition for writ of error herein, and having heard counsel for the United States and for the defendant, it is ordered that the writ of error be allowed in this case, and the amount of the supersedeas bond on file herein be fixed at the sum of \$2,000.

Done in open court this fifth day of June, 1922.

THOS. M. REED,

District Judge. [178—167]

Filed in the District Court, District of Alaska,
First Division. June 5, 1922. J. H. Dunn, Clerk.

Entered Court Journal, No. 5, page 65.

(Same Caption and Title.)

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS, that we, Jerry Simpson, the above-named defendant, as principal, and Wm. Temple, and John Ramm, as sureties, all of Ketchikan, Alaska, are held and firmly bound unto the United States of America, in the penal sum of \$2,000, for which payment well and truly to be made we bind ourselves and each of us, our heirs and each of our heirs, executors, and administrators firmly by these presents.

Signed, sealed and dated at Ketchikan, Alaska, June 5, 1922.

The condition of the above obligation is such that, whereas, the above-named principal and defendant, Jerry Simpson, is about to sue out a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment in the above-entitled court rendered by the District Court of the Territory of Alaska, Division Number One, and entered and made herein on June 5, 1922, whereby and by the terms of which the said defendant, Jerry Simpson, was sentenced to pay a fine of \$700 and be confined in the federal jail at Juneau, Alaska, for four months, and that he be imprisoned in addition to such jail sentence until such fine is paid, not exceeding 350 days, for the crime mentioned in the said judgment and sentence. [179—168]

NOW, THEREFORE, the condition of this obligation is such that if the said defendant, Jerry Simpson, shall prosecute said writ of error to effect, and answer all costs and damages, if he shall fail to make good his plea, and shall at all times render himself amenable to the orders and processes of this court, or the United States Circuit Court of Appeals, for the Ninth Circuit, and render himself in execution if the judgment of this court is confirmed, or any judgment of this court in said proceedings, or said Appellate Court, or any court, then this obligation shall be void; otherwise to remain in full force and effect.

JERRY SIMPSON,
Principal,
W. TEMPLE,
Surety,
JOHN RAMM,
Surety,

A. H. ZIEGLER.
JOHN H. DUNN.

Taken and acknowledged before me this fifth day of June, 1922.

JOHN H. DUNN,
Clerk of District Court.

United States of America,
Territory of Alaska,
City of Ketchikan,—ss.

Wm. Temple and John Ramm, being first duly sworn, on oath, depose and say, each for himself: I am one of the sureties on the foregoing bond; I am a resident of the Territory of Alaska, but not

a counsellor or attorney at law, marshal, clerk of any court, or other officer of any court; I am over the age of twenty-one years, and I am worth the sum of \$2,000, specified in the foregoing undertaking, and over and above all my just debts and liabilities; and exclusive of property exempt from execution.

[Seal]

W. TEMPLE.

JOHN RAMM, [180—169]

Subscribed and sworn to before me this fifth day of June, 1922.

JOHN H. DUNN,

Clerk of the Court.

Filed in the District Court, District of Alaska, First Division. June 5, 1922. J. H. Dunn, Clerk.

Approved this fifth day of June, 1922.

THOS. M. REED,

District Judge.

(Same Caption and Title.)

**Order Approving Sureties on Bond and Granting
Stay of Proceedings.**

This cause coming on to be heard upon the matter of the approval of the bond on appeal of the defendant, Jerry Simpson, and the Court having examined the bond and the sureties thereon, and having heard counsel for both parties, it is ordered that the sureties on the aforementioned bond are hereby approved, and a stay of proceedings in said cause is granted, in accordance with law.

Done in open court this fifth day of June, 1922.

THOS. M. REED,
District Judge.

Filed in the District Court, District of Alaska,
First Division. June 5, 1922. J. H. Dunn, Clerk.

Entered Court Journal No. 5, page 65. [181—
170]

[Endorsed]: No. 3917. United States Circuit
Court of Appeals for the Ninth Circuit. Jerry
Simpson, Plaintiff in Error, vs. The United States
of America, Defendant in Error. Transcript of
Record. Upon Writ of Error to the United States
District Court of the District of Alaska, Division
No. 1.

Filed August 24, 1922.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

United States Circuit Court of Appeals for the
Ninth Circuit, at San Francisco, California.

No. 3917.

JERRY SIMPSON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

**Statement of Errors upon Which Plaintiff in Error
Intends to Rely and Parts of Record Necessary
to Print.**

**STATEMENT OF ERRORS UPON WHICH
APPELLANT INTENDS TO RELY.**

Comes now Jerry Simpson, appellant in the above-entitled cause, and files this his statement of errors upon which he intends to rely in the trial of the above-entitled cause, and also enumerates the parts of the record which he thinks necessary for the consideration thereof:

1. The Trial Court for the Territory of Alaska, Division Number One, at Ketchikan, erred in overruling the demurrer to the complaint in the above-entitled cause, for the reasons set forth in said demurrer, to which action of the Trial Court the appellant then and there excepted, and an exception was duly allowed.

2. The Trial Court for the Territory of Alaska, Division Number One, at Ketchikan, erred in refusing to grant the petition of appellant to suppress the evidence obtained under the search-warrant in the above-entitled cause, for the reason that the affidavit upon which said search-warrant was based did not show or pretend to state facts showing any probable cause to believe that this appellant had committed any crime or had in his possession any evidence of any crime so committed by himself or anyone else, and because, therefore, said search-warrant was in violation of appellant's rights under

the Fourth Amendment to the Constitution of the United States, and was without foundation in law.

PARTS OF THE RECORD WHICH APPELLANT CONSIDERS NECESSARY FOR CONSIDERATION OF THE ERRORS ABOVE ENUMERATED.

1. Complaint for the violation of Section Alaska Bone Dry Act, Public 308, which appears on page 2 of the transcript of the above-entitled cause now on file in this court.

2. Search-warrant, which appears on pages 3 and 4 of the transcript of the above-entitled cause now on file in this court.

3. Affidavit for search-warrant, which appears on pages 4 and 5 of the transcript of the above-entitled cause now on file in this court.

4. Demurrer, which appears on pages 6, 7 and 8 of the transcript of the above-entitled cause now on file in this court.

5. Order overruling demurrer, which appears on page 8 of the transcript of the above-entitled cause now on file in this court.

6. Proceedings of the Court on Monday, May 22, 1922, commencing on page 9 and ending on page 10 of the transcript of the above-entitled cause now on file in this court.

7. Motion of appellant, Jerry Simpson, commencing on page 10 and ending on page 11 of the transcript of the above-entitled cause now on file in this court.

8. Proceedings of the Court, commencing on

page 12 and ending on page 13 of the transcript of the above-entitled cause now on file in this court.

9. Verdict, commencing on page 161 and ending on page 162 of the transcript of the above-entitled cause now on file in this court. .

10. All matter commencing with the judgment and sentence on page 162 and ending on page 170 of the transcript of the above-entitled cause now on file in this court.

Dated at Ketchikan, Alaska, this 6th day of December, 1922.

JOHN J. SULLIVAN and
A. H. ZIEGLER,

Attorneys for Appellant.

Copy of the foregoing received and service admitted this 6th day of December, 1922.

A. G. SHOUP,
United States District Attorney for the District of
Alaska, Division Number One.

[Endorsed]: No. 3917. United States Circuit Court of Appeals for the Ninth Circuit. Statement of Errors upon Which Plaintiff in Error Intends to Rely and Parts of Record Necessary to Print. Filed Dec. 12, 1922. F. D. Monekton, Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit, at San Francisco, California.

No. 3917.

JERRY SIMPSON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

**Designation of Additional Parts of Record Which
Appellee Thinks are Material.**

Comes now A. G. Shoup, United States Attorney
for the First Division of the District of Alaska
(within ten days after appellant filed his statement
of errors on which he intends to rely), and design-
ates additional parts of the record which he thinks
are material, as follows:

1. All the testimony of Fred E. Handy, begin-
ning on page 14 of the transcript and ending on
page 51, and beginning on page 102 and ending on
page 107.

2. All the testimony of T. W. McDonald, begin-
ning on page 54 of the transcript and ending on
page 69.

3. All the testimony of Lonnie McIntosh, begin-
ning on page 70 of the transcript and ending on
page 89.

4. All the testimony of Harold A. Snyder, be-
ginning on page 89 of the transcript and ending on
page 92.

5. All the instructions to the jury, beginning on page 154 and ending on page 160.

Dated at Ketchikan, Alaska, December 11, 1922.

A. G. SHOUP,

United States Attorney.

Copy of the foregoing received Dec. 11th, 1922.

A. H. ZIEGLER,

Attorney for Appellant.

[Endorsed]: No. 3917. United States Circuit Court of Appeals for the Ninth Circuit. Jerry Simpson, Plaintiff in Error, vs. United States of America, Defendant in Error. Designation of Defendant in Error Under Subdivision 8 of Rule 23. Filed Dec. 22, 1922. F. D. Monckton, Clerk.